165-379

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~308~~. 52

THE GERMANIA IRON COMPANY, EMIL HARTMANN, AND RICHMOND D. MALLET, APPELLANTS,

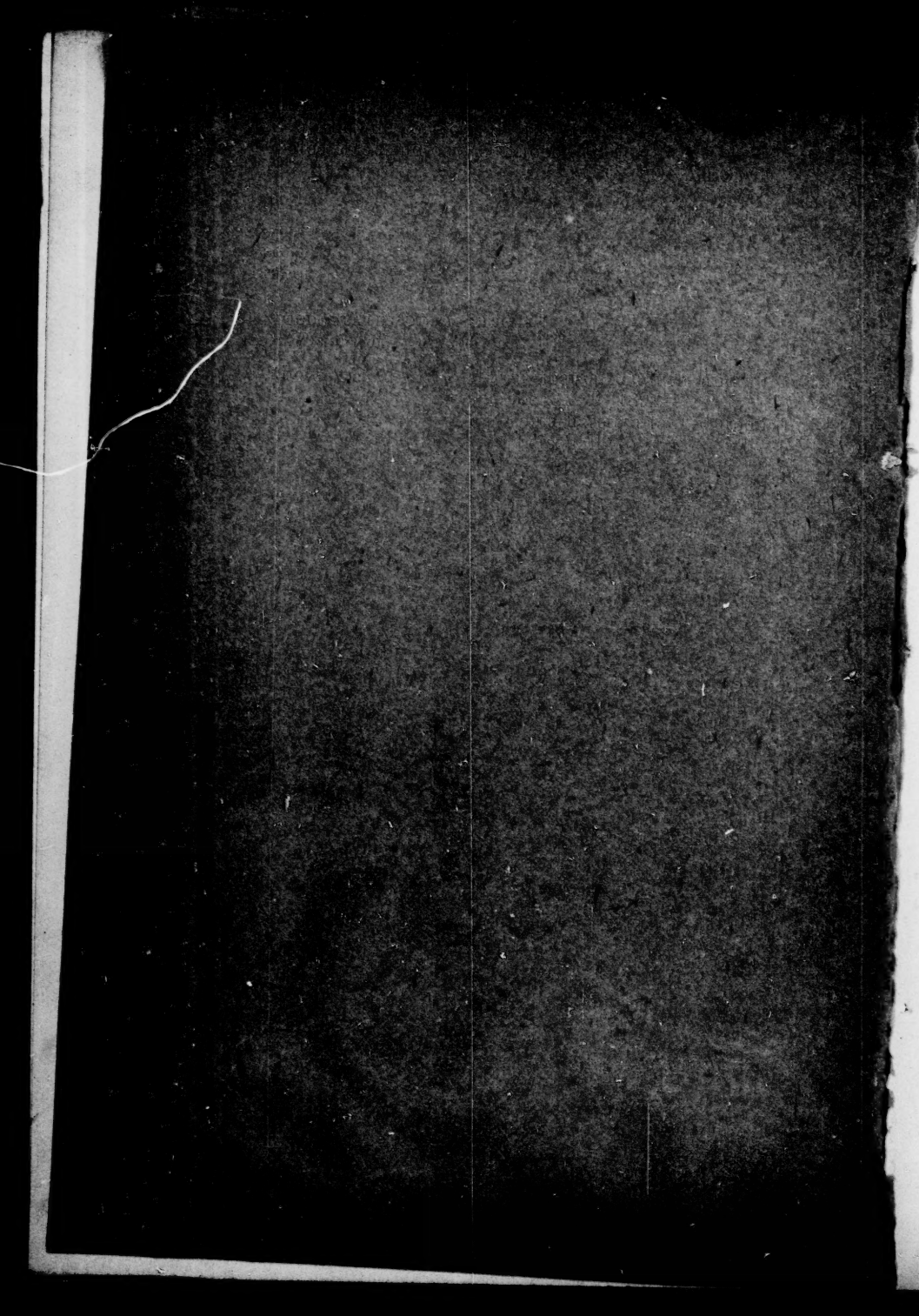
vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 2, 1894.

(15,473.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 30, 1895.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1893, of said court, begun and held at the United States court-house, in the city of St. Paul, Minnesota, on the first Monday in May, it being the 1st day of May, A. D. 1893, before the Honorable Henry C. Caldwell and Honorable Walter H. Sanborn, circuit judges, and Honorable Amos M. Thayer, district judge.

Attest:

[Seal United States Circuit Court of Appeals Eighth Circuit.]

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the 4th day of April, A. D. 1893, a transcript of record in pursuance to an appeal allowed by the circuit court of the United States for the district of Minnesota, in the case wherein The Germania Iron Company *et al.* are appellants and The United States of America is respondent, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

1 UNITED STATES OF AMERICA, *ss:*

To United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals, for the eighth circuit, at the city of St. Louis, Missouri, thirty days from and after the date hereof, pursuant to an appeal taken out of and allowed by the circuit court of the United States, for the district of Minnesota, fifth division, wherein Germania Iron Company, Emil Hartmann and Richmond D. Mallet are appellants and The United States of America is respondent, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Hon. Rensselaer R. Nelson, judge of the United States circuit court, for the district of Minnesota, this 7th day of March, in the year of our Lord one thousand eight hundred and ninety-three.

R. R. NELSON,
Circuit Judge.

Dated March 7th, A. D. 1893.

Assignment of Errors.

And now, in the foregoing-entitled cause, and at the time of the filing therein of the foregoing petition for appeal, come the said appellants, The Germania Iron Company, Emil Hartmann and Richmond D. Mallet, by Billson & Congdon, their solicitors, and say,

that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First. That the court erred in holding that because the patent to defendant, Reed, had been issued through the inadvertent disregard of certain pending and undetermined appeals and motions for review, through which other claimants of the land were seeking in the Land Department to overrule the decisions which had there been made against them and in favor of the defendant, Reed, which was therefore subject to cancellation upon mere proof of this inadvertence or mistake without any evidence that Reed was not legally entitled to the land, or would not probably have been awarded the same if the appeals and motions for review had been heard, and without proof of ultimate prejudice to any one from the inadvertence or mistake.

Second. In holding that the burden of proof was upon the defendants to show that the defendant, Reed, was lawfully entitled to the patent.

Third. In the court's conclusion of law that upon the facts proven the Government was entitled to a decree of cancellation.

2 Fourth. In decreeing the cancellation of the Reed patent, upon the ground of inadvertence or mistake, in the absence of any testimony indicating that such inadvertence or mistake had been prejudicial to the rights of any one.

Wherefore the said appellants pray that the decree of the said circuit court of the United States, for the district of Minnesota, in the above-entitled cause be reversed.

WM. W. BILLSON,
BILLSON & CONGDON,
Solicitors for Appellants.

Due service of within citation & assig*h*- of error by copy admitted this 9th day of March, 1893.

ROB'T G. EVANS,
Sp'l Ass't U. S. Att'y, Counsel & Solicitor for Compl't.

Indorsed: Filed March 10, 1893. Oscar B. Hillis, clerk, by M. H. Wishart, deputy.

Entered, No. 1. U. S. circuit court, district of Minnesota, fifth division. United States of America, plaintiff and respondent, *vs.* Thomas Reed *et al.*, defendants and appellants. Citation and assignment of errors. Due service of within citation & assig*h*- of errors by copy admitted this 9th day of March, 1893. Rob't G. Evans, sp'l ass't U. S. att'y, counsel & solicitor for compl't.

Filed March 10, 1893. Oscar B. Hillis, clerk, by W. H. Wishart, deputy.

United States Circuit Court, District of Minnesota, Fifth Division, Eight- Circuit. In Equity.

UNITED STATES OF AMERICA, Plaintiff and Respondent,
vs.
THOMAS REED, GERMANIA IRON COMPANY, EMIL HARTMANN, and RICHMOND D. MALLET, Defendants and Appellants

The above-named defendants, Germania Iron Company, Emil Hartmann and Richmond D. Mallet, conceiving themselves aggrieved by *b* the judgment entered on the 23d day of January, A. D. 1893, in the above-entitled proceeding, do hereby appeal from said judgment to the United States circuit court of appeals for the eight-circuit, and they pray that this their appeal may be al-owed; and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the eight circuit.

WM. W. BILLSON,
BILLSON & CONGDON,
Solicitors for Appellants Aforesaid, Duluth, Minn.

Dated, March 7th, 1893.

3 Due service of copy of within notice of appeal admitted this 9th day of March, 1893.

ROB'T G. EVANS,
Sp'l Ass't U. S. Att'y, Counsel for Compl't.

Endorsed: Filed March 10, 1893. Oscar B. Hillis, clerk, by H. H. Wishart, deputy.

United States Circuit Court, District of Minnesota, Fifth Division, Eight- Circuit. In Equity.

UNITED STATES OF AMERICA, Plaintiff and Respondent,
vs.
THOMAS REED, GERMANIA IRON COMPANY, EMIL HARTMANN, and RICHMOND D. MALLET, Defendants and Appellents.

Know all men by these presents, that we, Germania Iron Company, Henry A. Ware and Wm. W. Billson of Duluth, Minnesota, are held and firmly bound unto the United States of America, in the sum of two thousand dollars, ($2,000), to be paid to the said United States of America, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 3d day of March, in the year of our Lord one thousand eight hundred and ninsty-three.

Whereas, the above-named defendants, Germania Iron Company, Emil Hartmann and Richmond D. Mallett, have prosecuted an appeal to the United States circuit court of appeals for the eight- cir-

cuit, to reverse the degree rendered in the above-entitled suit, by the judge of the circuit court of the United States, for the district of Minnesota, fifth division:

Now therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

GERMANIA IRON CO. [GERMANIA IRON CO. SEAL.]
By WM. W. BILLSON, *Sec'y.* [SEAL.]
HENRY A. WARE. [SEAL.]
WM. W. BILLSON. [SEAL.]

4 Sealed and delivered in presence of—

CARL M. JOHNSON,
JAS. WAULESS,
As to Germania Iron Co. and Wm. W. Billson.

JOHN H. DIGHT,
JAS. WAULESS,
As to Henry A. Ware.

Approved by—

R. R. NELSON,
Circuit Judge.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Be it known, that on this 3d day of March, A. D. 1893, before me personally appeared Henry A. Ware and Wm. W. Billson, to me known to be the same persons described in and who executed the foregoing bond, and each for himself acknowledged the same to be his own free act and deed.

JAS. WAULESS,
[NOTARIAL SEAL.] *Notary Public, St. Louis County, Minn.*

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Be it known, that on this 3d day of March, A. D. 1893, before me appeared Wm. W. Billson, to me personally known, who, being by me duly sworn, did say that he is the secretary of the Germania Iron Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, and said Wm. W. Billson acknowledged said instrument to be the free act and deed of said corporation.

JAS. WAULESS,
[NOTARIAL SEAL.] *Notary Public, St. Louis County, Minn.*

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Henry A. Ware and Wm. W. Billson, the sureties named in and who executed the foregoing bond, being first duly sworn, doth, each for himself, depose and say, that he is a resident and freeholder of the State of Minnesota, and worth the amount of two thousand dollars ($2,000) above his debts and liabilities, and exclusive of his property exempt from execution.

HENRY A. WARE.
WM. W. BILLSON.

Subscribed and sworn to before me this 3d day of March, A. D. 1893.

[NOTARIAL SEAL] JAS. WAULESS,
Notary Public, St. Louis County, Minn.

5 Indorsed: Filed March 8, 1893. Oscar B. Hillis, clerk, by M. H. Wishart, deputy.

UNITED STATES OF AMERICA:

UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED, THE GERMANIA IRON COMPANY, EMIL HARTMANN, RICHMOND D. MALLETT, Defendants.

Pleas before the honorable, the judges of the circuit court of the United States of America for the district of Minnesota, fifth division, of the October term, A. D. 1892, of said court, held in the city of Duluth, in said district, in the year 1892.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the 13th day of Oct., A. D. 1891, came the complainant above named by its solicitor and filed in the clerk's office of said court its bill of complaint in words and figures, as follows, to wit:

And on the same day the following præcipe for chancery subpœna was filed of record in said cause, to wit:

Prescipe for Chancery Subpœna.

United States Circuit Court, District of Minnesota, Fifth Division.

UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED, THE GERMANIA IRON COMPANY, EMIL HARTMANN, RICHMOND D. MALLETT, Defendants.

To the clerk of said court:

Please issue chancery subpœna, returnable the first Monday of December, A. D. 1891, in the above-entitled case.

Dated at Duluth, Minn., Oct. 13th, 1891.

EUGENE G. HAY,
U. S. Att'y Dist. of Minnesota, Solicitor for Complainant.

Indorsed: Filed Oct. 13, 1891. Oscar B. Hillis, clerk, by T. H. Pressnell, deputy.

And on the same day the following chancery subpœna was issued, which was returned and filed of record in said cause on the 13th day of November, 1891, to wit:

United States of America, District of Minnesota, Fisth Division.

The President of the United States of America to Thomas Reed, a citizen of the State of Nebraska; The Germania Iron Company, a corporation created and existing under the laws of the State of Minnesota, Emil Hartman and Richmond D. Mallett, citizens of the State of Minnesota, Greeting:

6 You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of December next at the city of Duluth, then and there to answer the bill of complaint of the United States of America, filed against you on the 13th day of October, A. D. 1891; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 13th day of October, 1891. Issued at my office in the city of Duluth, under the seal of said circuit court, the day and year last aforesaid.

U. S. Circuit Court Seal.

OSCAR B. HILLIS, *Clerk*,
By T. H. PRESSNELL, *Deputy*.

MEMORANDUM.—The above-named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso*.

OSCAR B. HILLIS, *Clerk*,
By T. H. PRESSNELL, *Deputy*.
EUGENE G. HAY,
U. S. District Attorney.

Returnable to December rules, 1891.

Indorsed: Filed Nove. 13, 1891. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

UNITED STATES OF AMERICA, *District of Minnesota*. } ss:

I hereby certify and return, that at Duluth and district aforesaid, on the 21st day of October, A. D. 1891, I served the chancery subpœna hereto attached upon the within-named Germania Iron Company, personally, by handing to and leaving with A. M. Miller, president of said company, a true and correct copy thereof.

Dated this 22d day of October, 1891.

J. C. DONAHOWER,
U. S. Marshal,
By H. R. ARMSTRONG, *Deputy*.

Fee, service.... ..... $
Travel.... .....

7 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return, that at Duluth and district aforesaid, on the 21st day of October, A. D. 1891, I served the chancery subpœna hereto attached upon the within-named Emil Hartman personally, by handing to and leaving with him a true and correct copy thereof.

Dated this 22nd day of October, 1891.

J. C. DONAHOWER,
U. S. Marshal,
By H. R. ARMSTRONG, *Deputy.*

Fee, service..... $
Travel.... .....

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return, that at Duluth and district aforesaid, on the 30th day of October, A. D. 1891, I served the chancery subpœna hereto attached upon the within-named Richmond D. Mallett, personally by handing to and leaving with him a true and correct copy thereof.

Dated this 30th day of October, 1891.

J. C. DONAHOWER,
U. S. Marshal,
By H. R. ARMSTRONG, *Deputy.*

Sheriff's fee, service. . ..... $
Travel .....

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that after due search and inquiry I am unable to find Thomas Reed, named in the annexed chancery subpœna, within said district.

J. D. DONAHOWER,
U. S. Marshal,
By J. A. DONAHOWER, JR., *Deputy.*

8 *Bill.*

UNITED STATES OF AMERICA:

Circuit Court, District of Minnesota. In Equity.

To the honorable the judge of the circuit court of the United States for the district of Minnesota sitting in equity:

The United States of America, by W. H. H. Miller, its attorney general, brings this, its complaint against Thomas Reed, a citizen

of the State of Nebraska, The Germania Iron Company, a corporation duly organized, created and existing under the laws of the State of Minnesota, Emil Hartman and Richmond D. Mallett, citizens of the State of Minnesota, and thereupon your orator complaining shows unto your honor, and states, on the 20th day of November, A. D. 1889, and for more than ten years prior thereto, the following-described realty, to wit: the southwest quatrter of the northeast quarter and lots one and two, of section thirty, township sixty-three, north of range eleven, west, in the said State of Minnesota, containing one hundred and twelve acres in the Duluth land district of Minnesota, and also all the other realty described in this petition, were the property of your orator in fee-simple. That on the 21st day of July, A. D. 1885, Orilie Stram, formerly Orilie Moreau, by her attorney-in-fact, Frank W. Eaton, adjusted the location previously made on unsurveyed land of the said United States with Sioux half-breed scrip, issued under the act of Congress of July 17th, 1854, to lots three, five and six of the southeast quarter of the northwest quarter, section thirty, in township sixty-three, north of range eleven, west of the 4 P. M., containing one hundred and *and* sixty-one and $\frac{67}{100}$ acres, in the Duluth land district, Minnesota. On the same day Orilie Stram, formerly Orilie Moreau, by her attorney-in-fact, Frank W. Eaton, in like manner adjusted the location previously made on unsurveyed land of Sioux half-breed scrip under said act of July 17th, 1854, to lots one and two, and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter section thirty, in township sixty-three, north of range eleven, west of the 4th P. M., containing one hundred and fifty-two acres, in the Duluth land district of Minnesota.

That said two locations were posted accordingly in the proper tract books, in the officer of the Commissioner of the General Land Office at Washington, D. C., on the 9th day of September, A. D. 1885. That the validity thereof was contested by one Fred. T. Huntress, and Thomas W. Hyde and Angus McDonald made certain pre-emption claims to some of said described tracts, and upon an appeal to the Secretary of the Interior, who has jurisdiction over the said matter, and the said claimants Thomas W. Hyde and Angus McDonald, Frank W. Eaton, Orilie Stram, formerly Moreau, Fred. T. Huntress, the Secretary of the Interior on February 18th, 1889, held and decided that said scrip locations were invalid and should be cancelled. That
9 said pre-emption claims of Thomas W. Hyde and Angus McDonald must be rejected. That Fred T. Huntress' claim as a contestant could not be recognized, and that the land in controversy must be disposed of under the public land laws of the United States applicable thereto. That on February 23rd, 1889, Thomas Reed applied to make soldiers' additional entry on the southwest quarter of the northeast quarter, and lots one and two of section thirty, township sixty-three, north of range eleven west, Duluth, Minnesota, to the proper officers at the land office of the United States at Duluth, Minnesota; that he was allowed to make such entry and obtained final certificate on said February 23rd, 1889, numbered 1420. That at the same time that said Thomas Reed made his entry, one Charles

P. Wheeler applied to locate the southwest quarter of the northeast quarter of said section thirty, with Valentine scrip, and Warren Wing had applied to enter lot two of said section thirty aforesaid under section No. 2306 of the Revised Statutes of the United States. That on the morning of the day in which the said entry of Reed was allowed, one William M. Stokes was among other applicants to make various kinds of entries, before and at the time of opening the doors of the local land office at Duluth, present at said doors and attempting to enter the N. W. ¼ of the S. W. ¼, and the S. W. ¼ of the N. E. ¼ of the section aforesaid as a soldier's additional homestead.

(Line 5.) Your orator further shows that the said applications of Wheeler, Wing and Stokes were denied, and that said applicants appealed from such rejection to the Commissioner of the General Land Office (line 8). Your orator further shows that there was existing, on the said February 18th, A. D. 1889, and for some time prior thereto, a rule in the Department of the Interior that motions for review of decisions before the Secretary of the Interior should be filed with the Commissioner of the General Land Office who should thereupon suspend action under the decision sought to be reveiwed, and forward to the Secretary such motion or application. That such motions for a review were duly filed by the several parties affected by the said decision of February 18th, 1889, to wit: on March 13th and March 15th, 1889 (line 8), and on May 29th, one James K. Reddington duly filed his written appearance and caveat in the office of the Commissioner of the General Land Office against the entry of the said Thomas Reed. That on June 3rd, 1889, Messrs. Curtis & Burdette, attorneys for Orilie Stram (*née* Moreau) and Frank W. Eaton, duly filed with the Commissioner of the General Land Office a notice of the pendency before the Secretary of the Interior of a motion by Orilie Stram (*née* Moreau) and Frank W. Eaton, for a reconsideration and review of the decision of the department, dated February 1[illegible], 1889, in the said case of Hyde and McDonald against Stram and Eaton, giving a description of the land hereinbefore described, and req-esting that the Commissioner so give the necessary instructions that no action would be had by any division of the Land Office looking to the disposal of any lands mentioned hereinbefore until the final action of the Secretary of the Interior on the motion for reconsideration and review, which paper was duly filed in the office of the Commissioner of the General Land Office on June 14th, and on it an order was duly made suspending action as requested by the acting Commissioner of the General Land Office.

That the Secretary of the Interior by letter of April 17th, 1889, duly ordered that all proceedings involving title to said land pending in said department should be suspended.

That the motion for a review of the Secretary's said decision of February 18th, 1889, was still pending in the office of the Secretary of the Interior on and after the 20th day of November, 1889, and the rejected applications for the land described pending on appeal in the office of the Commissioner of the General Land Office aforesaid remained on and after said 20th day of November unacted upon,

and the conflicting claims to said land undecided. And your orator further shows that during the pendency hereof and contrary to the rules of the Department of the Interior and contrary to the orders of the Secretary of the Interior and the Commissioner of the General Land Office through inadvertance and mistake a portion of the land in controversy, to wit: the southwest quarter of the northeast quarter and lots one and two of section thirty, town. sixty-three, north of range eleven, west, in Minnesota, was approved for patenting in the office of the Commissioner of the General Land Office on November 8th, 1889, by a clerk in said office and a patent therefore was issued November 20th, 1889, to the said Thomas Reed; that the Secretary appointed according to the law to sign land patents for the President and the recorder of the General Land Office signed such patent relying upon the formal approval of the clerk authorized to make such approval and which said approval was inadvertently and mistakenly made as hereinafter stated.

That while said adverse claims were pending in the Department of the Interior to the said southwest quarter of the northeast quarter, and lots one and two, section thirty, township sixty-three, north of range eleven west of the 4th P. M., and should have been finally decided before patent should be issued to transfer the legal title to the said Thomas Reed under his entry, the said entry of the said Thomas Reed was inadvertently and by mistake approved for patent by a clerk in the office of the Commissioner of the General Land Office whose duty it was to approve the same for patent, provided a patent should be issued. That the same was approved by the said clerk for patent on the 20th day of November, A. D. 1889,
11 who was then and there ignorant that any of said motions for review had been made or that any notice had been filed against the issuing of said patent, and he was in ignorance of the orders of the said Secretary of the Interior and Commissioner of the General Land Office hereinbefore set forth. That upon said approval by the said clerk aforesaid a patent was issued by the recorder in the office of the Commissioner of the General Land Office, whose duty it was to issue the same on the approval of the said clerk aforesaid. That the recorder issued the same by mistake, inadvertance and ignorance of the true condition of affairs as hereinbefore set forth and under the belief that all adverse claims to said land had been determined, and that the said Thomas Reed was entitled to the issuance of said patent. That said patent was delivered to the said Thomas Reed contrary to said orders of the Secretary of the Interior and Commissioner of the General Land Office and recorded in the office of the register of deeds in St. Louis county, Minnesota, on the 29th day of November, A. D. 1889, on page 54, in Book D of Patents.

That the other defendants, Germania Iron Company, Richmond D. Mallett and Emil Hartman, claim some right, title or interest in and to said lands, and by, through and under the unlawful issuance of said patent as aforesaid, to the said Thomas Reed.

That demand has been duly made by and under the direction and orders of the Secretary of the Interior upon each of said de-

fendants for the relinquishment of all right, title or interest in and to said lands and the whole thereof derived by them and each of them on account of the wrongful issuing of said patent; but they and each of them have refused and still refuse to relinquish all right, title and interest acquired by said defendants and each of them by the said wrongful issuing of said patent.

Your orator further avers that by reason of said mistaken issuance of patent the Secretary of the Interior is without power to consider the contests which should have been heard and could now be heard and decided on their merits if said patent were cancelled.

Your orator further alleges that the said Germania Iron Company, the said Richmond D. Mallett, Emil Hartman and Thomas Reed well knew all the facts hereinbefore related as they transpired. And your orator further avers that the said land is of the value of $75,000.00. And your orator further prays that in consideration of the premises, and inasmuch as your orator cannot have proper and adequate relief in the premises in a court of law and to the end that the defendant may show cause why your orator should not have the relief prayed for, to wit: that the said patent be
12 cancelled, vacated and declared null and void, and that the defendants and all parties claiming under or through them may be forever enjoined and restrained from setting up or asserting any title whatever under or through the said patent, and that said patent may be surrendered to the Secretary of the Interior, and that your orator may have such other and further relief as to the court may seem just and equitable in the premises, may it please your honor to grant unto your orator the most gracious writ of subpœna of the United States of America to be directed against the defendants thereby commanding them at a certain day and under a certain penalty therein specified personally to be and appear before your honor and this honorable court and then and there answer in all and singular the premises and to perform and abide by such order and decree therein as to your honor may seem just and equitable.

W. H. H. MILLER,
Attorney General.
EUGENE G. HAY,
U. S. Dist. Att'y, Dist. Minnesota.

Filed Oct. 13th, 1891.

OSCAR B. HILLIS, *Clerk,*
By T. H. PRESSNELL, *Deputy.*

And afterwards, to wit, on the 4th day of January, 1892, the following answer was filed of record in said cause, viz:

Answer of Germania Iron Co. and Others.

(Title of Cause.)

The separate answer of the defendants Germania Iron Company, Emil Hartman, and Richmond D. Mallett to the bill of complaint herein.

Now comes the said defendants, Germania Iron Company, Emil Hartman and Richmond D. Mallett, and for their separate answer to the bill of complaint herein—

Admit the citizenship of the defendants and the incorporation of the defendant, Germania Iron Company, as in the bill of complaint alleged.

Admit that on the 20th day of November, A. D. 1889, and at all times prior thereto, the complainant was the owner in fee of the legal title to the land described in the bill of complaint; but deny that it was on said date the owner of the equitable title to said property.

Deny that on the 21st day of July, 1885, or at any time, Orilie Stram, formerly Moreau, by her attorney-in-fact, Frank W. Eaton, or otherwise, adjusted any location previously made on un-
13 surveyed land of the United States with Sioux half-breed scrip issued under the act of Congress of July 17th, A. D. 1854, to any of the lands lying in section thirty (30), in township sixty-three (63) north of range eleven (11) west of the fourth principal meridian in Duluth land district, Minnesota.

As to whether the two alleged locations by said Orilie Stram in the bill of complaint described, were posted in the proper tract books in the office of the Commissioner of the General Land Office at Washington, D. C., on the 9th day of September, 1885, or at any other time these defendants say that they do not know and have never been informed save by unreliable rumor, and leave the complainant to make such proof thereof as it shall be advised is material.

These defendants admit that the validity of the said alleged locations by said Orilie Stram was contested by one Fred. F. Huntress, and that Thomas W. Hyde and Angus McDonald made certain pre-emption claims to some of the tracts in the bill of complaint described, and that upon an appeal to the Secretary of the Interior, who had jurisdiction over the said matter, the said claims of Thomas W. Hyde and Angus McDonald, Frank W. Eaton, Orilie Stram, formerly Orilie Moreau, and Fred. F. Huntress, the Secretary of the Interior, on February 18th, 1889, held and decided that the said alleged scrip locations in the bill of complaint mentioned were invalid and should be cancelled; that the said pre-emption claims of said Thomas W. Hyde and Angus McDonald must be rejected and that Fred. F. Huntress' claim as a contestant could not be recognized, and that the land in controversy must be disposed of under the public land laws of the United States applicable thereto.

Admit that on February 23rd, 1889, Thomas Reed applied to make soldiers' additional homestead entry on the southwest quarter of the northeast quarter and lots one and two of section thirty, in township sixty-three, north of range eleven west, in Duluth land district, Minnesota, to the proper officers of the land office of the United States at said Duluth, and that he was allowed to make such entry and obtain final certificate on said February 23rd, 1889, numbered 1420.

These defendants further answering deny that at the same time that said Thomas Reed made his entry aforesaid, Charles P. Wheeler and Warren Wing applied, or had applied, to make the locations in the bill of complaint alleged to have been made by them, respectively.

As to whether on the morning of the day in which the said entry of Thomas Reed was allowed, one William M. Stokes was among other applicants to make various kinds of entries, before and
14 at the time of the opening of the doors of the local land office at Duluth, present at the said doors, or attempted to enter any of the lands in the bill of complaint described as a soldiers' additional homestead, or otherwise, these defendants say they do not know and have never been informed, save by unreliable rumor, and leave the complain-t to make such proof thereof as it shall be advised is material.

Further answering, these defendants admit that at a time subsequent to the application of said Thomas Reed for the entry of the land described in the bill of complaint, one Charles P. Wheeler, and one Warren Wing made application to the said Duluth land office for the entry of the same lands in the modes of the bill of complaint alleged which applications were denied and that appeals were taken from the rejection of the said applications to the Commissioner of the General Land Office, at the time and in the manner alleged.

And defendants admit that there was existing at the time in the bill of complaint alleged and prior thereto, a rule in the Department of the Interior respecting motions for the review of decisions of the Secretary of the Interior as in the bill of complaint set forth.

As to whether the motions for review in the bill of complaint mentioned, were filed by the several parties affected by said decision of February 18th, 1889, on the dates alleged in the bill of complaint or otherwise, or as to whether on the 29th day of May, or at any time, one James K. Reddington, duly filed his written appearance or caveat in the office of the Commissioner of the General Land Office against the entry of said Thomas Reed or as to whether on June 3rd, 1889, or at any time, any attorneys for Orilie Stram (*née* Moreau) or Frank W. Eaton, duly filed with the Commissioner of the General Land Office, a notice of the pendency before the Secretary of the Interior, of a motion by Orilie Stram (*née* Moreau) or Frank W. Eaton, for a reconsideration or review of the decision of the department, dated February 18, 1889, in the said case of Hyde and McDonald against Stram and Eaton, giving a description of the land in the bill of complaint described, and requesting the Commissioner to give the necessary instructions, that no action would

be had by any division of the land office, looking to the disposal of any of the lands mentioned in the bill of complaint until the final action of the Secretary of the Interior on the alleged motion for reconsideration or review, or as to whether such paper was duly filed in the office of the Commissioner of the General Land Office, on June 14th, as in bill of complaint alleged, or as to whether on it an order was made suspending action as requested by the acting Commissioner of the General Land Office, or as to whether the Secretary of the Interior, by letter of April 17th, 1889, or at any time, ordered that all proceedings involving the title to said lands
15 pending in said department should be suspended, these defendants say they do not know and have never been informed save by rumor and leave the complainant to make proof thereof as it may be advised.

These defendants admit that a motion for a review of the Secretary's said decision of February 18th, 1889, was still pending in the office of the Secretary of the Interior on, but not after the 20th day of November, 1889.

As to whether the rejected applications for land referred to in the bill of complaint and alleged to be pending on appeal in the office of the Commissioner of the General Land Office, remained on or after the said 20th day of November, unacted upon, and the conflicting claims to said lands undecided, or as to whether, during the pendency thereof, or contrary to the rules of the Department of the Interior, or contrary to the orders of the Secretary of the Interior, or the Commissioner of the General Land Office, or through inadvertence or mistake, a portion of the said land alleged to be in controversy, to wit, the southwest quarter of the northeast quarter and lots one and two of section thirty, in township sixty-three, north of range eleven west, in Minnesota, was approved for patenting in the office of the Commissioner of the General Land Office, on November 8th, 1889, or at any time, by a clerk in said office; or as to whether the Secretary appointed according to law to sign land patents for the President and recorder of the General Land Office, signed the patent referred to in the bill of complaint relying upon the formal approval of the clerk authorized to make such approval, or as to whether the said approval of said clerk was inadvertently or mistakenly made as in the bill of complaint alleged, or otherwise or as to whether, while said alleged adverse claims were pending in the Department of the Interior to the said southwest quarter of the northeast quarter and lots one and two in said section thirty, or while the said alleged adverse claims should have been decided before the patent should be issued to transfer the legal title to the said Thomas Reed, under his entry in the bill of complaint mentioned, the said entry of said Thomas Reed was inadvertently, or by mistake, approved for patent by a clerk in the office of the General Land Office, whose duty it was to approve the same for patent, or as to whether the same was approved by the said clerk for patent on the 20th day of November, 1889, or as to whether the said clerk was then and there ignorant that any of said motions for review had been made, or that any notice had been filed against the issuance

of said patent, or as to whether he was in ignorance of the orders of said Secretary of the Interior or the Commissioner of the General Land Office in the bill of complaint set forth; or as to whether the recorder issued the patent in the bill of complaint mentioned by mistake or inadvertence, or ignorance of the true condition of affairs,
as in the bill of complaint set forth or under the belief that
16 all adverse claims to said land had been determined; or as
to whether the said patent was delivered to the said Thomas Reed, contrary to said alleged orders of the Secretary of the Interior or the Commissioner of the General Land Office, or as to whether, by reason of the alleged mistaken issuance of the said patent, the Secretary of the Interior is without power to consider the alleged contests in the bill of complaint mentioned; or as to whether the land in the said patent described is of the value of seventy-five thousand dollars, or of what value the same may be, these defendants say that they do not know and have never been informed, save by unreliable rumor, and leave the complainant to make such proof thereof as it shall be advised is material.

Further answering, these defendants admit that on the 20th day of November, 1889, a patent for the southwest quarter of the northeast quarter and lots one and two in section thirty, in the bill of complaint mentioned, was issued to the defendant, Thomas Reed, and that said patent was thereafter recorded in the office of the register of deeds in and for the county of St. Louis, Minnesota, on the 29th day of November, 1889, on page 54, in Book "D" of Patents.

Further answering, these defendants admit that demand has been made by and under the direction of the Secretary of the Interior, upon each of these defendants, for relinquishment of all right, title or interest in or to said land, derived by them on account of the issuance of said patent, and have refused and still refuse to execute or deliver such relinquishment, and admit that the defendant, Germania Iron Company, claims the title in fee to the lands described in said patent, through and under the said patent, but deny that either of the defendants, Richmond D. Mallett or Emil Hartman has or claims any right, title or interest in or to the said lands under or by virtue of said patent or otherwise, and deny that the defendants, Richmond D. Mallett, Emil Hartman and The Germania Iron Company, or any of them, knew as they transpired, all the facts alleged in the bill of complaint, or any of said facts, except such as are hereinbefore admitted, and deny that any of these defendants knew of the issuance of the patent in the bill of complaint mentioned until more than a week after the issuance thereof.

Further answering, these defendants allege that the said Thomas Reed in the bill of complaint mentioned, served as a private soldier in the Army of the United States during the recent rebellion for more than ninety days, and was honorably discharged, and has remained loyal to the Government of the United States.

That prior to the year 1872, the said Thomas Reed had duly entered, under the homestead laws of the United States, a quantity

of land not exceeding forty acres, and prior to the 23rd day
17 of February, 1889, had duly presented to the General Land Office of the United States due proof of his identity and of his military service, with proper reference to his original homestead entry, and with the oath and proofs in that behalf required by the rules and regulations of the General Land Office, and had received from the Commissioner of the General Land Office a certificate in due form, recognizing his right to make an additional entry under the said homestead laws.

That on the 23d day of February, 1889, the said Thomas Reed duly presented at the land office of the United States at Duluth, Minnesota, all of the proofs, papers and certificate hereinbefore mentioned, in all respects as required by the regulations of the General Land Office, and then and there applied to enter as an additional homestead the lands in the bill of complaint described, which lands were then and there public lands of the United States, subject to entry under the homestead laws thereof; and then and there presented to the land officers at said Duluth land office the proofs, papers and certificate aforesaid, with an application in due form, for the entry — said lands, and then and there tendered to the receiver of said land office, the fees and commissions in that behalf required by law, all of which proofs, documents and application, were then and there accepted and approved by the said land officers, and the said fees and commissions, accepted and received by the receiver of the said land office, and the said entry duly allowed, and final certificate duly issued therefor, as in the bill of complaint alleged.

That by virtue of said entry the said Thomas Reed thereupon became the owner in equity of the said land and entitled to receive a patent for the same from the United States, and that the patent referred to in the bill of complaint was duly and lawfully issued in pursuance of the said entry and not otherwise.

These defendants further allege, that after the making of the said entry, and on the 26th day of February, 1889, the said Thomas Reed and Precy Reed, his wife, for value received, duly sold and conveyed to Andreas M. Miller of Duluth, Minnesota, the land in the bill of complaint described; and again on the fourth day of March, 1889, duly executed and delivered to the said Miller, a deed of the land aforesaid, reciting that the same was given in confirmation of the prior deed above mentioned, and with the intent to grant to and confirm in the said Miller all rights or estate accrued or to accrue to the said Thomas Reed under said entry.

That thereafter and on the 11th day of June, A. D. 1889, the said
Andreas M. Miller and Anne A. Miller, his wife, for value
18 received, duly sold and conveyed to the defendant, The Germania Iron Company, the land aforesaid and in the bill of complaint described; and that said Andreas M. Miller and the said The Germania Iron Company, made their respective purchases of the said land, for large and valuable considerations, in good faith, and in the belief that the defendant, Thomas Reed, by his aforesaid entry, had acquired a good and valid title thereto, and without any

knowledge or information, or reason to suppose that there were any other persons entitled to claim an interest therein.

These defendants further allege that the complainant herein has no interest in the prosecution or maintenance of this suit. That in the event of the cancellation of said patent, as prayed by the complainant, the lands described therein, unless the same were repatented to said Thomas Reed, as of right they ought to be by his aforesaid entry thereof, would enure directly and exclusively to the benefit of said Charles P. Wheeler and Warren Wing, or to certain other persons claiming to have acquired right thereto, subsequently to the entry thereof by said Thomas Reed, and this, without any additional consideration enuring to the complainant.

Wherefore, these defendants pray that the said bill may be dismissed with costs.

WM. W. BILLSON,
Solicitor for Defendants Aforesaid.
WM. W. BILLSON,
Of Counsel.

UNITED STATES OF AMERICA, }
District of Minnesota, County of St. Louis, } *ss:*

William W. Billson, being first duly sworn, deposes and says that he is the secretary of The Germania Iron Company, one of the defendants above named; that he has heard read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to such matters he believes it to be true.

WM. W. BILLSON.

Subscribed and sworn to before me this 4th day of January, A. D. 1892.

[SEAL.] A. L. AGATIN,
Notary Public, St. Louis County, Minnesota.

Filed January 4, 1892. Oscar B. Hillis, clerk, by A. L Bloomer, deputy.

And afterwards, on the 26th day of April, 1892, the following replication was filed for record in said cause, viz:

19 *Replication.*

Title of Cause.

Replication of complainant in above cause to the answer of the Germania Iron Company, Emil Hartman, and Richmond D. Mallett, defendants.

This repliant, saving and reserving all advantage of exception to the manifold insufficiences of said answer, for replication thereto

saith that it will aver and prove its said bill to be true and sufficient and that the said answer is untrue and insufficient.

Wherefore complainant prays relief as in said bill set forth.

E. G. HAY,
U. S. District Attorney for the District of Minnesota, and
ROB'T G. EVANS,
Special Assistant U. S. Attorney,
Solicitors for the Complainant.

Filed April 26, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

And afterwards, on the 25th day of November, 1891, the following order for appearance of absent defendant was filed of record in said cause, to wit:

UNITED STATES OF AMERICA:

Circuit Court, District of Minnesota. In Equity.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED *et al.*, Respondents.

Now comes the complainant herein by Eugene G. Hay, attorney of the United States for the district of Minnesota, solicitor in said case, and moves the court here for an order to be served upon Thomas Reed, one of the defendants herein, who is absent from and cannot be found within this district, and upon whom service cannot be made within said district, and who has never voluntarily appeared hereto, directing him to appear, plead, answer or demurr to said complain-t's bill of complaint, and as the showing for such order complainant submits the affidavit attached hereto, and the return of the United States marshal for said district of Minnesota.

UNITED STATES OF AMERICA,
District of Minnesota.

Eugene G. Hay, being duly sworn deposes and says, that he is the attorney of the United States for the district of Minnesota and complainant's solicitor in the above-entitled case; that the above-entitled suit is brought to enforce a claim to certain real estate described in complainant's bill of complaint, and situated within the State
20 and district of Minnesota; that the defendant, Thomas Reed, is not an inhabitant of, nor can he be found within the said district of Minnesota, and that said defendant does not voluntarily appear to said bill of complaint, and that said affiant is informed that the residence of said defendant is in the State and district of Nebraska.

EUGENE G. HAY.

U. S. Dist. Court Seal. Subscribed and sworn to before me this 23rd day of November, A. D. 1891.

WM. A. SPENCER, *Clerk, &c.*

UNITED STATES OF AMERICA, }
District of Minnesota, Fifth Division. }

The President of the United States of America to Thomas Reed, a citizen of the State of Nebraska; The Germania Iron Company, a corporation created and existing under the laws of the State of Minnesota, Emil Hartman and Richmond D. Mallett, citizens of the State of Minnesota, Greeting:

Your are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States, for the district of Minnesota, on the first Monday of December next, at the city of Duluth, then and there to answer the bill of complaint of the United States of America, filed against you on the 13th day of October, A. D. 1891; hence fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 13th day of October, 1891. Issued at my office in the city of Duluth, under the seal of said circuit court, the day and year last aforesaid.

U. S. Circuit Court Seal.

OSCAR B. HILLIS, *Clerk*,
By T. H. PRESSNELL, *Deputy*.

MEMORANDUM.—The above-named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso*.

OSCAR B. HILLIS, *Clerk*,
By T. H. PRESSNELL, *Deputy*.
EUGENE G. HAY,
U. S. District Attorney.

Returnable to December rules, 1891.

Indorsed: Returned into the clerk's office and filed this 13 day of Nov., A. D. 1891. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

21 UNITED STATES OF AMERICA, }
District of Minnesota, } *ss*:

I hereby certify and return, that at Duluth and district aforesaid, on the 21st day of October, A. D. 1891—

I served the chancery subpœna hereto attached upon the within-named Germania Iron Company personally, by handing to and leaving with A. M. Miller, president of said company, a true and correct copy thereof.

Dated this 22nd day of October, 1891.

J. C. DONAHOWER,
U. S. Marshal.
By H. R. ARMSTRONG, *Deputy*.

Fee, service..... ..... $
Travel..... ....

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return, that at Duluth and district aforesaid, on the 21st day of October, A. D. 1891—

I served the chancery subpœna hereto attached upon the within-named Emil Hartman personally, by handing to and leaving with him a true and correct copy thereof.

Dated this 22nd day of October, 1891.

J. C. DONAHOWER.
U. S. Marshal,
By H. R. ARMSTRONG, *Deputy.*

Fee, service..... $
Travel.....

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return, that at Duluth and district aforesaid, on the 30th day of October, A. D. 1891—

I served the chancery subpœna hereto attached upon the within-named Richmond D. Mallett personally, by handing to and leaving with him a true and correct copy thereof.

Dated this 30th day of October, 1891.

J. C. DONAHOWER,
U. S. Marshal,
By H. R. ARMSTRONG, *Deputy.*

Sheriff's fee, service..... $
Travel.....

22 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return, that after due search and inquiry I am unable to find Thomas Reed, named in the annexed chancery subpœna, within said district.

J. C. DONAHOWER,
U. S. Marshal,
By F. A. DONAHOWER, JR., *Deputy.*

UNITED STATES OF AMERICA, } sct:
District of Minnesota, Fifth Division, }

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper-writing with the original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original, and of the whole thereof, in the cause therein named.

Seal of U. S. Circuit Court, Fifth Division, Dist. of Minnesota.

Witness my hand as clerk, and the seal of said court. Done at my office in Duluth, Minnesota, the 21st day of November, A. D. 1891.

OSCAR B. HILLIS, *Clerk*,
By A. L. BLOOMER, *Deputy*.

No. 1. United States circuit court, district of Minnesota, fifth division. The United States of America, plaintiff, *vs.* Thomas Reed *et als.*, defendants. Certified copy of the chancery subpœna and returns.

UNITED STATES OF AMERICA, }
District of Minnesota. }

Circuit Court.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
THOMAS REED *et al.*, Respondents. }

Order for Appearance of Absent Defendant.

It having been made to appear to the satisfaction of the court on this 23d day of November, A. D. 1891, that the above-entitled action is brought to enforce a claim to certain real property within the said district of Minnesota, and that Thomas Reed is not an inhabitant of, and has not been found within said district, and has not voluntarily appeared in this suit: it is therefore, on motion of Eugene G. Hay, attorney of the United States for the district of Minnesota, and complainant's solicitor herein, ordered by the court that the said defendant above named be, and he is hereby ordered to appear, plead, demurr or answer the bill of complaint herein on or before the 4th day of April, A. D. 1892.

23 It is further ordered by the court that a copy of this order be served upon said defendant wherever found, if practicable, and that the United States marshal for the district of Nebraska, or his duly authorized deputy, is hereby specially appointed to make service of this order upon the said defendant, Thomas Reed, if found, and also that said order shall be served upon the person or persons in possession of, or in charge of said property, unless they are served with subpœna herein and upon the filing of the affidavit that said defendant cannot, after diligent inquiry, be found and that personal service is not practicable, this order may be served upon said defendant by publication once a week for six consecutive weeks in the Saint Paul Despatch, a newspaper of general circulation, printed and published at Saint Paul, Minnesota, and it is further ordered by the court that if said defendant fail to appear and plead as herein directed and ordered said bill shall be taken as confessed.

R. R. NELSON, *Judge*.

Indorsed: Filed Nov. 25th, 1891. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

And afterwards, on the 7th day of December, 1891, the following appearance was filed of record in said cause, to wit:

United States Circuit Court, District of Minnesota, Fifth Division.
In Equity.

THE UNITED STATES OF AMERICA, Complainant,
against
THOMAS REID, THE GERMANIA IRON COMPANY, EMIL HARTMAN, and RICHMOND D. MALLET, Defendants.

To the clerk of the above-named court:

The clerk of the court will please enter my appearance as solicitor for the defendants other than Thomas Reed, in the above-entitled cause.

Dated December 7th, A. D. 1891.

WM. W. BILLSON,
Solicitor for Defendants Other than Thomas Reed, Duluth, Minnesota.

Indorsed: Filed Dec. 7th, 1891. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

And on the same — the following order of appearance was entered of record in said cause, to wit:

24 *Chancery Rule and Order Book.*

U. S. Circuit Court, District of Minnesota, Fifth Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REID, THE GERMANIA IRON COMPANY, EMIL HARTMAN, and RICHMOND D. MALLET, Defendants.

This day comes the defendants, The Germania Iron Company, Emil Hartman and Richmond D. Mallet, by Wm. W. Billson, solicitor, on whose motion it is hereby ordered that the appearance of said defendants be and the same is hereby entered.

Dec. 7, 1891.

And afterwards on the 2nd day of April, 1892, the following order for appearance of absent defendants was filed of record in said cause, to wit:

UNITED STATES OF AMERICA, }
District of Minnesota. }

In the Circuit Court.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
THOMAS REED *et al.*, Respondents. }

Order for Appearance of Absent Defendant.

It having been made to appear to the satisfaction of the court on this 1st day of April, A. D. 1892, that the above-entitled action is brought to enforce a claim to certain real property within the said district of Minnesota, and to cancel and set aside a patent heretofore issued to the same by the complainant herein, and that Thomas Reed, one of said respondents, is not an inhabitant of and has not been found within said district and has not voluntarily appeared in this suit; and that pursuant to an order heretofore made in the above-entitled action on the 23rd day of November, A. D. 1891, for the appearance of said Thomas Reed; that a copy of the order then made was duly issued to the United States marshal for the district of Nebraska, and from his return thereon that said Thomas Reed, after diligent search, was not found within the said district of Nebraska by said United States marshal, and it further appearing that no publication of said order of the 23rd day of November, 1891, has been made as in said order directed, and there not being sufficient time to make said publication prior to the appearance day mentioned in said order:

Now, therefore, on motion of Eugene G. Hay, Esq., attorney of the United States for the district of Minnesota, and complainant's solicitor herein,

It is ordered by the court that the said above-named respondent Thomas Reed be and he is hereby ordered to appear, plead
25 and demur or answer to the bill of complaint herein on or before the 6th day of June, A. D. 1892; and it further appearing that said defendant cannot after diligent inquiry be found, and that personal service is not practicable upon him and that he is not within said district and is not a resident thereof,

It is further ordered that this order be served upon said defendant by publication hereof once a week for six successive weeks in the St. Paul Dispatch, a newspaper of general circulation printed and published at St. Paul, Minnesota; and it is further ordered by said court that if said defendant fail to appear and plead, as herein directed and ordered, said appeal shall be taken as confessed.

By the court:

R. R. NELSON, *Judge.*

Indorsed: Filed April 2, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

UNITED STATES OF AMERICA:

Circuit Court, District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED *et al.*, Respondents.

Comes now the above-named complainant, by Eugene G. Hay, its solicitor, and moves the court on the affidavit of its said solicitor and return of the United States marshal on the order heretofore made by this court respecting the service on Thomas Reed, one of the defendants in the above-entitled cause, which said affidavit and order, together with the return of said marshal thereon is hereto attached and made a part of the moving papers herein, to fix a day on or before which said defendant Thomas Reed shall appear and plead, demur or answer to the bill of complaint in the above-entitled cause, and to provide for such service thereof as to the court shall seem proper.

EUGENE G. HAY.

UNITED STATES OF AMERICA:

Circuit Court, District of Minnesota. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED *et al.*, Respondents.

UNITED STATES OF AMERICA,
District of Minnesota.

Eugene G. Hay, being first duly sworn, desposes and says that he is the attorney of the United States for the district of Minnesota and complainant's solicitor in the above-entitled cause. That
26 the above suit is brought to enforce a claim to certain real estate described in complainant's bill of complaint and situated within said district of Minnesota, and to cancel a patent thereof issued to said Thomas Reed by complainant. That the said Thomas Reed is not an inhabitant of, nor can he be found within said district of Minnesota; and that he has not voluntarily appeared to said bill of complaint.

That heretofore, to wit, on the 23rd day of November, A. D. 1891, the foregoing facts having been made to appear to the above court by the affidavit of your affiant and the return of not found, as to said defendant Thomas Reed, by the United States marshal in and for said district on the subpœna issued in said cause, the above-entitled court made an order in said cause, a copy of which is hereto attached, which said order was filed in the office of the clerk of said court on the 25th day of November, 1891. That thereafter a duly certified copy of said order was issued by the clerk of said court and duly delivered into the hands of the United States marshal*n* for the district of Nebraska; that thereafter said marshal made search for

said Thomas Reed, and certified and returned on said order that after diligent search he was unable to find the said Thomas Reed within his district. That no publication of said order has been made, as provided therein, and that the time is not now sufficient to allow a publication thereof, pursuant to the terms of the same, prior to the 4th day of April, 1892.

EUGENE G. HAY.

U. S. Cir. Ct. Seal. Subscribed and sworn to before me this 1st day of April, 1892.

OSCAR B. HILLIS,
Clerk U. S. Cir. Ct. Dist. of Minnesota.

UNITED STATES OF AMERICA:

Circuit Court, District of Minnesota.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED *et al.*, Respondents.

Order for Appearance of Absent Defendant.

It having been made to appear to the satisfaction of the court on this 23d day of November, A. D. 1891, that the above-entitled action is brought to enforce a claim to certain real property within the said district of Minnesota, and that Thomas Reed is not an inhabitant of, and has not been found within said district, and has not voluntarily appeared in this suit, it is therefore on motion of Eugene G. Hay, attorney of the United States for the district of Minnesota and complain-t's solicitor herein, ordered by the court that the said defendant above-named be, and he is hereby ordered to appear,
27 plead, demurr or answer to the bill of complaint herein on or before the 4th day of April, A. D. 1892.

It is further ordered by the court that a copy of this order be served upon said defendant wherever found, if practicable, and that the United States marshal for the district of Nebraska or his duly authorized deputy is hereby specially appointed to make service of this order upon the said defendant Thomas Reed if found, and also that said order shall be served upon the person or persons in possession of, or in charge of said property, unless they are served with subpœna herein and upon the filing of the affidavit that defendant cannot after diligent inquiry be found, and that personal service is not practicable, this order may be served upon said defendant by publication once a week for six consecutive weeks in the Saint Paul Dispatch, a newspaper of general circulation printed and published at Saint Paul, Minnesota; and it is further ordered by the court that if said defendant fail to appear and plead as herein directed and ordered said bill shall be taken as confessed.

R. R. NELSON, *Judge.*

Filed Nov. 25th, 1891. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

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UNITED STATES OF AMERICA, }
District of Minnesota, Fifth Division, } *sct:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper-writing with the original thereof, which is in my custody as such clerk, and that such a copy is a correct copy of such original and of the whole thereof, in the cause therein named.

U. S. Cir. Ct. Seal. Witness my hand as clerk and the seal of said court. Done at my office in Duluth, Minnesota, this 25th day of November, A. D. 1891.

OSCAR B. HILLIS, *Clerk,*
By A. L. BLOOMER, *Deputy.*

UNITED STATES OF AMERICA, }
District of Minnesota, Fifth Division, } *sct:*

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of Dec'r, 1891, I received the within order, and that after diligent search I am unable to find the within-named defendant, Thomas Reed, within my district.

BRAD. D. SLAUGHTER,
United States Marshal for the District of Nebraska,
By C. W. LYON,
Deputy United States Marshal.

28 Indorsed: Filed April 2, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

And afterwards, on the 20th day of August, 1892, the following affidavit of publication and order was filed of record in said cause, to wit:

STATE OF MINNESOTA, }
County of Ramsey. }

Affidavit of Publication.

M. C. Melady, being duly sworn, deposes and says that the annexed printed copy of an advertisement of order for appearance of absent defendant, The United States of America *vs.* Thomas Reed *et al.* hereto attached, was cut from the columns of the St. Paul Dispatch, a daily newspaper printed and published regularly and continuously in the English language for more than one year next preceeding April 2, A. D. 1892, and ever since, in the city of St. Paul, county of Ramsey, and State of Minnesota, and the seat of government of said State, and that the same was published in said newspaper as an advertisement for six successive weeks on Saturday of each week, and that the first publication of said advertisement was made on the 2 day of April, A. D. 1892, and the last publication

was made on the 7 day of May, A. D. 1892, and that during the whole time of said publication he was one of the printers and publishers of said newspaper.

M. C. MELADY.

Subscribed and sworn to before me this 9 day of May, A. D. 1892. Printer's fees, $1.50.

[NOTARIAL SEAL.] D. SMITH,
Notary Public, Ramsey County, Minn.

Order for Appearance of Absent Defendant.

UNITED STATES OF AMERICA, }
District of Minnesota. }

In the Circuit Court.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
THOMAS REED *et al.*, Respondents. }

It having been made to appear to the satisfaction of the court on this 1st day of April, A. D. 1892, that the above-entitled action is brought to enforce a claim to certain real property within the said district of Minnesota, and to cancel and set aside a patent heretofore issued to the same by the complainant herein, and that Thomas Reed, one of said respondents, is not an inhabitant of, and has not been found within, said district, and has not voluntarily appeared in this suit; and that pursuant to an order heretofore made in the above-entitled action on the 23rd day of November, A. D.
29 1891, for the appearance of said Thomas Reed, that a copy of the order then made was duly issued to the United States marshal for the district of Nebraska, and from his return thereon that said Thomas Reed, after diligent search, was not found within the said district of Nebraska by said United States marshal; and it further appearing that no publication of said order of the 23rd day of November, 1891, has been made as in said order directed, and there not being sufficient time to make said publication prior to the appearance day mentioned in said order:

Now, therefore, on motion of Eugene G. Hay, Esq., attorney of the United States for the district of Minnesota, and complainant's solicitor herein:

It is ordered by the court that the said above-named respondent, Thomas Reed, be and he is hereby ordered to appear, plead, demur or answer to the bill of complaint herein on or before the 6th day of June, A. D. 1892; and it further appearing that said defendant cannot, after diligent inquiry, be found, and that personal service is not practicable upon him, and that he is not within said district and is not a resident thereof,

It is further ordered that this order be served upon said defendant by publication hereof once a week for six successive weeks in the St. Paul Dispatch, a newspaper of general circulation, printed

and published at Saint Paul, Minnesota; and it is further ordered by said court that if said defendant fail to appear and plead, as herein directed and ordered, said appeal shall be taken as confessed.

By the court:

R. R. NELSON, *Judge.*

Indorsed: Filed Aug. 30, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

And afterwards, on the 22nd day of December, the following decision of Judge Nelson was filed of record in said cause, to wit:

United States Circuit Court, District of Minnesota, Fifth Division.

UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED *et al.*, Defendants.

W. H. H. Miller, Attorney General,
Eugene G. Hay, U. S. district att'y for district of Minnesota, solicitors for complainant.
Robert G. Evans, special assistant U. S. att'y, of counsel.
Billson & Congdon, solicitors for defendants.

30 NELSON, *J.:*

The bill of complaint is filed by the United States against Thomas Reed, a citizen of the State of Nebraska; The Germania Iron Company, duly created, organized and existing under the laws of the State of Minnesota; Emil Hartmann and Richmond D. Mallett, citizens of the State of Minnesota. The relief sought in the bill of complaint is to cancel a patent issued on Nov. 20, 1889, by inadvertence and mistake, and delivered Nov. 29, 1889, to Thomas Reed, and to restrain the other defendants from setting up or asserting any title whatsoever under or through the said patent. The defendant, Reed, suffered a default, the other defendants answered the bill; after replication, a stipulation was entered into and filed by the parties agreeing upon certain facts. This stipulation and the admissions in the answer, with certain exhibits offered, and the testimony of the Land Department and subordinate clerks, present the case for the determination of the court.

Facts.

I.

The land described in the patent sought to be cancelled in this action was a part of the public domain held by the Government at the time of the issuing of the patent. (Bill, fol. 2 and page 1 of answer.)

II.

On the 21st day of July, 1885, Orilie Stram, formerly Moreau, adjusted a location previously made on unsurveyed land of complainant with Sioux half-breed scrip, issued under an act of Congress of July 17, 1854, to lots one and two (1 & 2) and the southwest quarter of the northeast quarter (S. W. ¼ N. E. ¼) and northwest quarter of the southeast quarter (N. W. ¼ S. E. ¼) of section thirty (30), town. sixty-three (63) N. range eleven (11) W. and other land in the Duluth land district of Minnesota; and that said locations were posted in the proper tract books of the office of the Commissioner of the General Land Office on the 9th day of September, 1885. (Exhibits 1 and 2, Record, pages 25 to 48 inclusive.)

III.

The validity of these adjustments was contested by one Fred. T. Huntress; and Thomas W. Hyde and Angus McDonald made certain pre-emption claims to some of said tracts. Upon appeal to the Secretary of the Interior, who had jurisdiction over said matter and said claimants, the said Secretary on February 18, 1889, decided that said scrip locations were invalid and should be cancelled; that the pre-emption claims of Hyde and McDonald must be rejected; that the claim of Fred. T. Huntress could not be recognized; and that the land in controversy must be disposed of under the public land laws of the United States applicable thereto. (Bill page 2; answer page 9.)

31 IV.

On February 23rd, 1889, Thomas Reed, one of the defendants, applied to make soldiers' additional homestead entry of the southwest quarter of the northeast quarter (S. W. ¼ N. E. ¼) and lots one and two (1 & 2), section thirty (30), town. sixty-three (63) N., range eleven (11) W., Duluth, Minnesota, to the proper officers of the land office of the United States at Duluth, Minnesota, was allowed to make such entry, and obtained final certificate on said day, numbered 1420. (Bill page 3; answer page 9.)

V.

At the same time that said Reed made his entry, Charles P. Wheeler applied to locate the southwest quarter of the northeast quarter (S. W. ¼; N. E. ¼) of said section thirty (30) with Valentine scrip (the character of which is shown in Exhibit 4, pages 68 to 69 inclusive); and one Warren Wing had applied to enter lot two (2) of section thirty (30) under section 2306 of the Revised Statutes of the United States. (Exhibit 4, page 51, and 5, page 72; answer page 10.)

VI.

On the morning of the day when the Reed entry was allowed, one William M. Stokes was among other applicants to make various

kinds of entries, before and at the time of the opening of the doors of the local land office at Duluth, present at said doors and attempting to enter the northwest quarter of the southwest quarter (N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$) and southwest quarter of the northeast quarter (S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$) of the section aforesaid, as a soldiers' additional homestead. (Exhibit 6, pages 92 to 111 inclusive.)

VII.

The applications of Wheeler, Wing and Stokes were denied and they appealed from such denial to the Commissioner of the General Land Office. (Answer page 10; Exhibits 4, 5 & 6; 2nd clause of stipulation; 8th clause of stipulation.)

VIII.

On February 18, 1889, and ever since, there has been in existence in the Department of the Interior a rule that motions for review of the decisions of the Secretary of the Interior should be filed in the office of the Commissioner of the General Land Office, and that the Commissioner should thereupon suspend action under the decision sought to be reviewed, and forward to the Secretary such motion. (Answer page 3; third clause stipulation page 19; Exhibit "A," page 119; rules of the Interior Department not printed in record.)

32 IX.

Motions for review of the decision of the Secretary of the Interior of February 18, 1889, were duly made and filed on March 13th and 15th, 1889, respectively, by the parties affected adversely by said decision; thereupon an order was made suspending all action under the decision sought to be reviewed, and such order was of full force and such motions were pending unheard and undetermined at the time and after the issuing of the patent sought to be cancelled; the patent to said Reed hereinafter referred to was issued in direct violation, or in ignorance of said order. (Third stipulation, page 19; Exhibit "A," page 118; Exhibit 8, page 114; Exhibit 9; page 116; Exhibit 7; page 112.)

X.

At the time of and before the approval for patenting of the lands described in the Reed patent and the issuance of said patent, the appeals of Charles P. Wheeler, Warren Wing and William M. Stokes from the rejection of their several applications hereinbefore referred to, were pending, unheard and undetermined, and have not since been heard or determined. (8th stipulation, page 20; Exhibit "A," page 118; Exhibits one to nine inclusive.)

XI.

While said appeals and motions were pending and undisposed of, a clerk of the General Land Office at Washington, whose duty it

was to examine entries of the character described, in ignorance of the pendency of said conflicting claims, said motions and said appeals, approved the lands described in the said patent for patenting to Thomas Reed, one of the defendants hereto and a patent was, upon such approval, issued to him on the 20th day of November, 1889; that said patent was signed by the Secretary to the President and countersigned by the recorder of the General Land Office, each of whom, at the time they signed and countersigned said patent as aforesaid, were in ignorance of the pendency of the aforesaid conflicting claims, and acted wholly upon the said approval of said clerk. The approval of the entry for patent and the signatures to the patent were made, notwithstanding the fact that a caveat pointing out the conflicts was on file with the rest of the entry papers relating to the lands involved and such approval and signatures were made in ignorance of the contents of said caveat. (4th and 5th stipulations, Exhibits 7 and D.)

XII.

Said patent was delivered on the 29th day of November, 1889, recorded in Book "D" of Patents, page 54, in the office of the register of deeds of St. Louis county, Minnesota. (Answer page 13.)

33 XIII.

Demand has duly been made by and under the direction of the Secretary of the Interior upon the defendants and each of them, for a relinquishment of all right, title and interest in or to said land derived by them under or on account of the issuance of said patent, and said defendants and each of them have refused to comply with such demand. (Answer page 13.)

XIV.

Thomas Reed, to whom the patent was issued, one of the defendants herein, has been defaulted and an order has been entered adjudging him in default, and that the bill of complaint as against him be taken as confessed. (Pages 150 to 152, inclusive, of Record.)

XV.

The answer of defendants other than Reed attempts to allege that such defendants took the real estate described in said patent in good faith, without notice of the circumstances attending the issuing of the patent, and for a valuable consideration. There is some evidence in the record bearing upon this question, but before the taking of the testimony was concluded, solicitors for defendants notified complainant that such defense would not be relied upon and therefore this point is not further noticed in the abstract of facts and will not be referred to in the brief of complainant. This question being eliminated from the controversy, the contention stands the same as if between the Government and the patentee Reed, and it is upon this theory that it will be submitted in complainant's brief.

Conclusion.

That a public wrong was perpetrated upon the Executive Department by subordinate clerks, in consequence of which the department has disabled itself from discharging the *the* duties imposed upon it by law and that the complainant is entitled to the relief prayed for in the bill of complaint.

A decree is ordered in favor of the complainant.

Memorandum.

The Government can sustain a suit in equity to set aside a patent, or cancel it when its duty to the public requires such action. The undisputed facts in this case show that by the inadvertence and mistake of a subordinate clerk the Interior Department was disabled from performing its function and discharging its legal duty to review contests properly before it.

It was contemplated that the Land Department should consider contests like the one pending before it. A constructive
34 fraud was perpetrated by the acts of subordinates in the department.

A court of equity cannot be called upon to exercise its jurisdiction in a case more appropriate. When the legal rights of the parties have been changed by inadvertence and mistake, equity restores them to their former condition, when it can be done without interfering with new rights acquired on the strength and faith of the altered condition of the legal rights and without injustice to the parties.

The contention of the defendant's counsel is that, notwithstanding the defendant Reed is shown to have obtained the patent irregularly by the inadvertence and mistake of the subordinate official, the Government, before it is entitled to relief, must, in addition, show that the defendant would not have prevailed if the rehearing and appeals had been heard.

Such is not the rule applying to suits by the United States of this character. It applies only to cases brought for equitable relief to individuals. Whether a patent has issued, by mistake of its agents equity affords relief, to the Government, as it would if corrupt conduct on the part of its officials is shown, and when such is established the patent must fall, unless the patentee proves that by the law properly administered he would be entitled to it, and even then, it is doubtful whether a court of equity would receive proof of that kind after the mistake and inadvertence of the subordinate agents were established.

In the case of Williams *vs.* U. S. (138 U. S. Rep., pg. 517) some wholesome doctrines are announced applicable to the facts in this case, and the decision rests upon "the uncontroverta*b*le fact that through inadvertence and mistake the land was certified (patented) * * *"

R. R. NELSON, *Judge.*

Dated Dec. 22, 1892.

(NOTE.)—Cases examined:
Moffat *vs.* U. S., 112 U. S. Rep., pg. 24.
U. S. *vs.* Minor, 114 U. S. Rep., pg. 233.
Maxwell land grant case, 121 U. S. Rep., pg. 325
U. S. *vs.* San Jancinto Tin Co., 125 U. S. Rep., pg. 273.
U. S. *vs.* Beebe, 127 U. S. Rep., pg. 338.
U. S. *vs.* Silver Mining Co., 128 U. S. Rep., pg. 674.
Williams *vs.* U. S. 138 U. S. Rep., pg. 514.
Marquez *vs.* Frisbie, 101 U. S. Rep., pg. 473.
Casey *vs.* Vassor *et al.*, 50 Fed. R., 258.
U. S. *vs.* Marshall Mining Co., 129 U. S. Rep., pg. 579.
U. S. *vs.* Mo., Kansas & Texas R'y Co., 141 U. S. Rep., pg. 358.

And afterwards, on the 23rd day of January, the following stipulation concerning decree was filed of record in said cause, to wit:

35 In the United States Circuit Court in and for the District of Minnesota, Fifth Division.

UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED, GERMANIA IRON COMPANY, a Corporation; EMIL HARTMAN, and RICHMOND D. MALLETT, Defendants.

It is hereby stipulated by and between the parties to the above-entitled action that the decree of the court herein may be signed, entered, and filed in vacation, and that the same shall have the same force and effect as a decree entered during term.

W. H. H. MILLER,
Att'y General,
ROBERT G. EVANS,
Special Ass't U. S. Att'y,
EUGENE G. HAY,
U. S. Dist. Att'y,
Attorneys for Complainant.
BILLSON & CONGDON,
Attorneys for Defendants Other Than Thomas Reed.

Dated Jan. 20th, 1893.

Indorsed: Filed Jan'y 23, 1893. Oscar B. Hillis, clerk.

And afterwards, on the same day, the following decree was entered of record in said cause, to wit:

Decree.

United States Circuit Court, District of Minnesota, Fifth Division.
In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED, GERMANIA IRON COMPANY, a Corporation; EMIL HARTMAN, and RICHMOND D. MALLET, Defendants.

October, 1892.

This cause came on to be heard at this term and was argued by counsel for the respective parties, except defendant Thomas Reed, against whom judgment *pro confesso* for default of answer has heretofore on the 5th day of September, A. D. 1892, been duly ordered herein; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the patent described in the bill of complaint herein from the United States to said Thomas Reed, dated November 20, 1889, and recorded in the office of the register of deeds of St. Louis county, Minnesota, in Book D of Patents, page 54, on the 29th day of November, 1889, purporting to convey the southwest quarter of the northeast quarter (S. W. ¼ N. E. ¼) and lots one (1) and two (2) of section thirty (30), township sixty-three (63) north, of range
36 eleven (11) west, of the fourth P. M., in St. Louis county, Minnesota, be and the same hereby is cancelled, vacated and declared null and void, and that the defendants and each of them, and all parties claiming under or through them or either of them, be forever enjoined and restrained from setting up or asserting any title whatever under or through said patent, and that said patent be surrendered to the Secretary of the Interior.

And further, that the complainant have and recover of and from the defendants its costs and disbursements, allowed to it by law.

Dated January 23, 1893.

R. R. NELSON, *Judge.*

Indorsed: Filed Jan'y 23, 1893. Oscar B. Hillis, clerk.

And on the 8th day of March, 1893, the following appeal was filed of record in said cause, to wit:

United States Circuit Court, District of Minnesota, Fifth Division, Eight- Circuit.

UNITED STATES OF AMERICA, Plaintiff and Respondent,
vs.
THOMAS REED, GERMANIA IRON COMPANY, EMIL HARTMANN, and RICHMOND D. MALLET, Defendants and Appellants.

An appeal from the final decree in this cause in favor of the complainant having been this day taken by the defendants, and allowed

by the undersigned judge of said court, by whom the said cause was heard and decided, and the said appellants having made and filed a sepersedeas bond approved in due form, and the said defendants having by the *the* terms of said decree been enjoined and restrained from setting up or asserting any title whatever under or through patent in the bill of complaint described:

Now, on motion of Messrs. Billson & Congdon, solicitors for the said defendants and appellants, it is hereby concurrently, with the allowance of said appeal, ordered—

That the said enjoining and restraining clause of said decree be and is so far suspended and modified during the pendency of said appeal and until the final determination thereof as to permit the said defendants to present and use the said patent in evidence in the action now pending involving the title to said lands. Brought in this court by the Germania Iron Company against Frank W. Eaton *et al.*, defendants.

Dated this 7th day of March, A. D. 1893.

R. R. NELSON,
Circuit Judge.

37 Indorsed: Filed March 8, 1893. Oscar B. Hillis, clerk, by M. H. Wishart, deputy.

And on the 28th day of January, 1893, the following tax-tion of costs was filed of record in said cause, to wit:

In the United States Circuit Court, District of Minnesota, 5th Division.

UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED *et al.*, Defendants.

To Messrs. Billson & Congdon:

Please take notice that the complainant will apply to the clerk on February 15th, at ten (10) o'clock in the forenoon to tax costs in the above-entitled case in accordance with the statement of costs hereto attached.

Yours truly,

EUGENE G. HAY,
Attorney for Complainant.

Dated January 28th, A. D. 1893.

Circuit Court of the United States of America for the District of Minnesota, 5th Division.

UNITED STATES OF AMERICA, Compl't,
vs.
THOMAS REED *et al.*, Def't-.

No..... October term, 1892. Judgment.....
.....,188... Damages, ... $.....

.....

Attorneys.

Clerk's fees (for items see Fee Book, page 1), $66.10; marshal's fees:

(To be taxed.)

On writ, 6.00: subpœnas, $6.00; & mileage, .12; writ of inquiry, 6.12.

Witness fees:

Name .....days.....miles.
" .....days.....miles.
" .....days.....miles.
" .....days.....miles.
" .....days.....miles.
" .....days.....miles.
" .....days.....miles.

38 Attorneys' fees:

Docket fee, 20.00; depositions 20 00

Master's and examiner's fees:

Computing and reporting amount due .....$
Taking depositions .....$
Printing summons (St. Paul Despatch) 32 50
Printers' fees printing record, $124.70; printing brief, $19.55. 144 25
Costs taxed at .....$

—— ——, *Clerk.*

St. Paul, ——, 188–.

Costs may be taxed as above stated.

BILLSON & CONGDON,
Att'y- for Def'ts.

DISTRICT OF MINNESOTA, *ss:*

Eugene G. Hay came personally before me, and having been first duly sworn, he doth depose and say that he is one of the attorney-of said plaintiff in the above-entitled cause; that the above bill and items of costs and disbursements therein are just and correct, and have been necessarily incurred therein.

EUGENE G. HAY.

Subscribed and sworn to before me on this 26th day of Jan'y 1893.

OSCAR B. HILLIS, *Clerk.*

Due service of the within notice is hereby admitted this 29th day of Jan'y, 1893.

BILLSON & CONGDON,
WM. W. BILLSON,
Att'ys for Defendants.

Indorsed: Filed March 8, 1893. Oscar B. Hillis, clerk, by M. H. Wishart, deputy.

Stipulation.

(Title of Cause.)

It is hereby stipulated and agreed by and between the parties hereto (except defendant Thomas Reed, who has not appeared herein) and their counsel, for the purpose of saving expense in taking testimony in this cause, as follows:

1st. That Exhibits "1," "2," "3," "4," "5," "6," "7," "8," and "9" and the papers and indorsements thereon therein contained and filed herewith in the office of the clerk of said court shall be deemed and taken to be and may be used as evidence upon the hearing and determination of this cause;

39 2d. That the allegations in the bill of complaint herein commencing with the words "your orator," in line five of folio eight down to and including the words "land office" in line eight of folio eight are true;

3d. That the allegations in the bill of complaint, commencing with the words "your orator" in line eight of folio eight down to and including the words "March 15th, 1889," in line eight of folio nine are true;

4th. That J. M. Townsend shall be deemed to have testified as follows: That he was at the time of the issuing of the patent to Thomas Reed described in the bill of complaint, the recorder of the General Land Office at Washington, D. C., and that it was his duty, as such recorder, to countersign patents when sent to him approved for patenting from the proper division of the land office, without inquiry as to whether or not all preceding requirements authorizing a patent to the land covered had been complied with, and that he so signed the patent to Thomas Reed without inquiry as to and in ignorance of the various contests and appeals and motion for review referred to in said bill of complaint, and in ignorance of the fact that the same were pending and undisposed of;

5th. That Miss McKean shall be deemed to have testified that she was at the time of the issuing of the patent to Thomas Reed, referred to in the bill of complaint, the secretary to sign the name of the President of the United States to land patents; that her sole duty was to sign patents when presented to her for signature, approved for patenting by the proper division of the land office without inquiry as to whether or not all preceding requirements authorizing a patent to the land covered had been complied with, and that she so signed the patent aforesaid to Thomas Reed without inquiry as to and in ignorance of the various contests, appeals and motions for review, referred to in said bill of complaint, and in ignorance of the fact that the same were pending and undisposed of;

6. That Exhibit "D," attached hereto, is a true copy of the deposition of William B. Douglas, taken before a committee of the General Land Office in Washington, D. C., in the case of the improper issue of patent 1420, the patent herein sought to be cancelled, on

Wednesday, December 18th, 1889, and that the same may be used as evidence in this case as fully and with the same effect as if taken to be used herein under the rules of this court;

7th. That John W. Noble, is and has been since March 4th, 1889, the Secretary of the Interior of the United States, and that his statement hereto attached, marked Exhibit "A," shall be deemed and taken to be and may be used as evidence upon the hearing and determination of this cause, as fully as if the same had been taken before an examiner under the rules of this court;

8th. That Thomas H. Carter is, and was at the date of the issuance of the patent described in the bill of complaint herein to Thomas Reed, the Commissioner of the General Land Office of the United States at Washington, D. C., and that he would testify, if regularly called as a witness herein, that at and before the time of the approval for patenting of lots 1 and 2 and the southwest quarter of the northeast quarter of section 30, township 63 north, of range 11 west, to Thomas Reed, and the issuing of the patent as described in said bill of complaint to said Thomas Reed, therefor- that the appeals of Charles T. Wheeler, Warren Wing and William M. Stokes referred to in the bill of complaint herein and in Exhibits "4," "5" and "6" referred to in subdivision "1" of this stipulation were and still are pending and undisposed of in the said land office, and that none of the same have ever been heard or determined.

9th. That for the purposes of the hearing and determination of any claim on the part of any defendant of being in good faith purchaser in this cause, the value of the land described in the patent to Thomas Reed, sought to be cancelled, is admitted to be as alleged in the bill of complaint, to wit, $75,000.00;

10th. That Andreas M. Miller, hereinafter referred to, was one of the persons interested in the organization of the said Germania Iron Company; that he has been from the time of its organization a stockholder therein and a member of its board of directors, and since September 2d, 1891, has been and now is the president thereof;

11th. That Emil Hartman, one of the defendants herein, was one of the original incorporators of the said Germania Iron Company, was president thereof from its organization until September 2d, 1891, and has been a member of its board of directors ever since its organization.

12th. That defendant, Thomas Reed, and his wife, on the 25th day of May, 1883, by a written instrument bearing that date and recorded in the office of the register of deeds of St. Louis county on February 27th, 1889, in Book "C" of Powers page 46, appointed one Robert McCaskey their attorney-in-fact to locate the additional homestead of said Thomas Reed on the land described in the patent herein sought to be cancelled, and gave their said attorney full power of substitution. That thereafter, on the 16th day of June, 1883, said McCaskey, by written instrument of that date, recorded in the office of the register of deeds of St. Louis county, on the 27th day of February, 1889, in Book "C" of Powers on page 48, sub-

stituted for himself Emil Hartman, one of the above-named
41 defendants as the attorney-in-fact of said Reed and his wife.
That thereafter, on the 26th day of February, 1889, the said Reed and wife, by said Emil Hartman, as their attorney-in-fact, executed and delivered to Andreas M. Miller, hereinbefore in the 9th subdivision hereof referred to, for the consideration therein expressed of one dollar, a quitclaim deed purporting to convey to said Miller the land in said patent described, which deed was recorded in the office of the register of deeds of St. Louis county on the 2d day of December, 1889, in Book 34 of Deeds, on page 591. That thereafter, on the 11th day of June, 1889, said Thomas Reed and wife, by said Hartman as attorney-in-fact, executed and delivered to the said Germania Iron Company, for the consideration therein expressed of one dollar, a quitclaim deed, purporting to convey to said Germania Iron Company the real estate described in said patent. That said deed was recorded in the office of the register of deeds of St. Louis county on the 12th day of June, 1889, in Book 34 of Deeds, on page 303. That thereafter, on the 4th day of March, 1889, the said Thomas Reed and wife executed and delivered to said Andreas M. Miller, for the consideration therein expressed of one dollar, a quitclaim deed, purporting to convey to said Miller the real estate in said patent described, which said deed was recorded in the office of the register of deeds of St. Louis county on November 30th, 1889, in Book 34 of Deeds, on page 589. That on the 11th day of June, 1889, the said Andreas M. Miller, his wife joining, executed and delivered to the said Germania Iron Company, for the consideration therein expressed of $50,000 a quitclaim deed purporting to convey to said iron company the land in said patent described, which said deed was recorded in the office of the register of deeds of St. Louis county on the 2d day of December, 1889, in Book 34 of Deeds, on page 592. That the only claim of the said defendants, or either of them, to the real estate in said patent described is founded upon and grew out of, the said foregoing-described instruments;

13th. That Exhibit "B" herewith filed, being rules of practice in cases before the United States district land offices, the General Land Office and the Department of the Interior, approved August 13th, 1885, to take effect September 1st, 1885, reprinted at the Washington Government Printing Office in 1892, is a true copy of such rules of practice, together with the amendments thereto as were in force from 1885 down to the present time; and that said copy of said rules of practice may be used upon the hearing and determination of this cause, without being printed in full in the record, and may be used and referred to in the argument and briefs of counsel herein;

42 14th. It is further hereby stipulated and agreed that each and all of the exhibits herein referred to and the papers and indorsements thereon therein, and in each of them contained, and the facts herein stipulated to be true and the statements of such facts as are herein stated would be testified to by witnesses who have not been called, shall be deemed and taken to be and considered

as evidence upon the hearing and determination of this cause without objection as to materiality.

It is further stipulated and agreed that the decision of the Secretary of the Interior referred to in said bill as of date February 18, 1889, and the decision of the Secretary of the Interior referred to in the statement of the Hon. John W. Noble hereto attached as of date April 7, 1890, may be used upon the hearing and determination of this cause without being printed in full in the record and may be referred to in the arguments and briefs of counsel herein.

EUGENE G. HAY,
U. S. District Attorney for District of Minnesota, and
ROBERT G. EVANS,
Special Assistant U. S. Attorney, Solicitors for Complainant.
BILLSON & CONGDON,
Solicitors for Defendants Hartman, Mallett, and Germania Iron Co.

Filed Sept. 12, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

EXHIBIT 1.

(4–207.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August* 24, 1892.

I, I. R. Conwell, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of Sioux half-breed scrip 19 D, register & receiver's No. 188, Duluth, Minn., series, located July 21, 1885, on lots 3, 5 and 6, and S. E. ¼, N. W. ¼, sec. 30, T. 63 N., R. 11 W., in Duluth, Minn., land district by F. W. Eaton, attorney-in-fact of Orilie Stram, with accompanying papers, are a true and literal exemplification from the files and records of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

U. S. G. L. O. Seal.

I. R. CONWELL,
Acting Commissioner of the General Land Office.

43 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March* 21, 1889.

Address only the Commissioner of the General Land Office.

I, S. M. Stockslager, Commissioner of the General Land Office, hereby certify that the notation across the face of the attached S. H. B. S. certificate No. 19 "D," Orilie Moreau, was erroneously made, said cancellation being of the location of said scrip[t] R. & R. No. 188, Duluth, Minn., by reason of the decision of the Secretary of the Interior of Feb. 18, 1889.

Said notation will be disregarded by the register and receiver at any district land office where said scrip may be presented for location.

In witness whereof, I hereunto subscribe my name and [SEAL.] affix the seal of the General Land Office this 27th day of March, 1889.

S. M. STOCKSLAGER,
Commissioner.

No. 19 D. Certificate of Scrip. Acres 160.

Issued in accordance with the provisions of the act of Congress, approved July 17, 1854, entitled "An act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota belonging to the half-breeds or mixed bloods of the Dacotah or Sioux nation of Indians and for other purposes."

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS.

Five certificates or pieces of scrip No. 19 A to No. 19 E, A and B being each for 40, C for 80, and D and E each for 160 acres, issued in satisfaction of this claim for 480 acres.

Whereas, it has been duly reported to this office by the commissioner appointed by the President to ascertain the number and names of the half-breeds and mixed bloods entitled to share in the benefits of the grant or reservation above particularly mentioned, that Orilie Moreau, of about the age of eight years is one of the half-breeds or mixed bloods of the said Dacotah or Sioux nation of Indians, specified in the said act of Congress, and as such is entitled to receive a certificate of scrip, *pro rata*, in exchange for her right title and interest in and to the said reservation of land, lying on the west side of Lake Pepin and the Mississippi river, in the said Territory of Minnesota, which was set apart for the benefit of said half-breeds and mixed bloods by the 9th article of the treaty of Prairie du Chien, of July 15, 1830;

44 And whereas, the said report of the said commissioners has been approved and confirmed by the President of the United States, and the said Orilie Moreau has duly and formally relinquished to the United States all her right, title and interest in and to the said reservation of land, as by her instrument of relinquishment sufficiently appears:

Therefore, be it known, that this certificate of scrip, issued by authority aforesaid, will entitle the said Orilie Moreau to locate, at the proper land office, the quantity of one hundred and sixty acres of land, as a part of her four hundred and eighty acres claim, upon any of the lands within the said reservation that were not occupied on the 17th of July, 1854, by actual and *bona fide* settlers of the said half-breeds or mixed bloods, or such other persons as had at that date, or prior thereto, gone into said Territory, by authority of law, or upon any other unoccupied lands subject to pre-emption or private

sale, or upon any other unsurveyed lands not reserved by Government, upon which they have respectively made improvements.

This certificate of scrip is not by law transferable, and any assignment or conveyance of the same is therefore void.

Given under my hand and the seal of the department, at Washington, this twenty-fourth day of November, A. D. eighteen hundred and fifty-six.

[SEAL.] GEO. W. MANYPENNY,
Commissioner.

[On the margin:] Cancelled by dep't decision of Feb'y 18, 1889. Affirms office decision of March 7, 1887. See to R. & R. Feb'y 19, 1889.

E. S. E.

(Indorsed on back:) Delivered to Amable Moreau, father, March 24th, 1857.

Know all men by these presents: that we, Orilie Stram, formerly Orilie Moreau, and Roman Stram, her husband, of Crawford county and State of Wisconsin, —— ——, of —— county and —— ——, of ——, have made, constituted and appointed, and by these presents do make, constitute and appoint Frank W. Eaton, of St. Louis county, State of Minnesota, our true and lawful attorney for us and our name, place and stead, to select and locate at any land office in the United States, the lands to which I may be entitled by reason of the "Sioux half-breed Lake Pepin reserve scrip*t*," to wit: Number 19, letter "D," for 160 acres, said scrip being granted and issued to the said Orilie Moreau, now Orilie Stram, in accordance with the provisions of an act of Congress approved July 17th, 1854, entitled an act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota, belonging to the half-breeds or mixed bloods of the Dakota or Sioux nation of Indians, and for other purposes, and on such location to ask and receive patent therefor; and if the said scrip is located on unsurveyed lands, my said attorney is hereby authorized to make
45 any improvements required in my name and stead and for my own personal use and benefit, or do any other act or thing necessary to perfect and secure a permanent and *bona fide* location, as much as though I was personally present, hereby declaring all lawful acts of my said attorney in the premises of the same valid and binding force as if done personally by ourselves. And we do further ordain and declare that the said Frank W. Eaton is hereby irrevocable vested with all such power and authority as we might or could exercise personally if present and acting in the premises, with full power of substitution and revocation, hereby ratifying and confirming whatsoever our said attorney or his substitute appointed by him, by virtue hereof, may lawfully do in the premises.

In witness whereof, we have hereunto set our hands and seals this twenty-fifth day of May, A. D. 1883.

ORILIE STRAM, [SEAL.]
Formerly ORILIE MOREAU, *Scripee.*
ROMAN STRAM. [SEAL.]

Signed, sealed and delivered in presence of—

JAC. RAFFAUF,
LYDIA LEROUX.

STATE OF WISCONSIN, }
County of Crawford, } *ss:*

Oh this 25th day of May, A. D. 1883, came before me Orilie Stram, formerly Orilie Moreau, and Roman Stram, her husband, to me personally known to be the persons who executed the foregoing power of attorney and acknowledged that they executed the same for the uses and purposes therein expressed.

[SEAL.] JAC. RAFFAUF,
Notary Public, Crawford County, Wisconsin.

STATE OF WISCONSIN, }
County of Crawford, } *ss:*

OFFICE OF CLERK OF CIRCUIT COURT.

I, W. G. Campbell, clerk of the circuit court of the county of Crawford, in the State of Wisconsin, the said court being a court of record and having a seal do hereby certify that Jac. Raffauf, Esquire, May 25, 1883, whose name appears subscribed to the annexed instrument, was at the date thereof a notary public within and for said State, residing in said county, duly appointed and qualified, and empowered by the laws of said State to administer oaths, take acknowledgments of deeds, and perform such other duties as by the law of nations or according to commercial usage may
46 be performed by notaries public; and that to his acts and attestations, as such, full faith and credit are and ought to be given in court and out. I further certify that I verily believe said signature, purporting to be his, is genuine; that the seal thereto attached is a correct impression of his official seal; and that said instrument is executed and acknowledged according to the l...s of said State.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at the city of Prairie du Chien, in said county and State, on this 20th day of June, A. D. 1883. [SEAL.]

W. G. CAMPBELL,
Clerk of Circuit Court as Aforesaid.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

U. S. LAND OFFICE, *Duluth, Minn.*

In the Matter of the Application of ORILIE STRAM, formerly Orilie Moreau, to Locate Sioux Half-breed Scrip No. 19, Letter D, for One Hundred Sixty Acres of Land.

Frank W. Eaton, being duly sworn on his oath, says that he is the attorney-in-fact of said Orilie Stram and is duly authorized by her to locate the scrip above described, and that he has so located the same as such attorney-in-fact on the following-described unsurveyed real estate within the limits of the Duluth land district, to wit:

Commencing at the quarter post on the east line of section twenty-five (25), town. sixty-three (63) north of range twelve (12) west of the fourth principal meridian, thence north on said section line eighty rods (80), thence east eighty (80) rods, thence north eighty (80) rods, thence east eighty rods, thence south eighty (80) rods, thence east eighty rods, thence north eighty (80) rods, thence west two hundred and forty (240) rods to the place of beginning; which said property when surveyed will be described as follows, to wit: The northeast quarter of the northwest quarter (N. E. ¼ of N. W. ¼) the south half of the northwest quarter (S. ½ of N. W. ¼), and the southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼) of section thirty (30) in township sixty three (63) north of range eleven (11) west of the fourth principal meredian. That he has as such attorney built upon said land a dwelling-house fourteen by sixteen feet, one story high, built of timber and covered with split shingles, with door and windows, and has cleared ready for cultivation one-half acre of said land.

47 That said improvements were made under the personal direction of said Orilie Stram and for her personal use and benefit and under and by authority of said power of attorney thereattached.

FRANK W. EATON.

Sworn and subscribed before me this 16th day of June, A. D. 1883.

J. R. CAREY, *Register.*

Scrip Certificate No. 19 *D, Register and Receiver's No.* —.

Sioux half-breed reserve at Lake Pepin.

Act of July 17, 1854.

LAND OFFICE, DULUTH, MINNESOTA, *June* 16, 1883.

We hereby certify, that the attached half-breed scrip No. 19, letter D was on this day received at this office from Orilie Stram (by), of Crawford county, State of Wisconsin, by F. W. Eaton, her attorney-in-fact.

J. R. CAREY, *Register.*
W. W. SPAULDING, *Receiver.*

I, Orilie Stram, formerly Orilie Moreau, of Crawford county, State of Wisconsin, hereby apply to locate, and do locate, the following unsurveyed tract of land, designated as follows, to wit: Commencing at the quarter post of the east line of section twenty-five (25), town. sixty-three (63) north, of range twelve (12) west, of the fourth principal meridian, thence north on said section line eighty rods, thence east eighty rods, thence north eighty rods, thence east eighty rods, thence south eighty rods, thence east eighty rods, thence south eighty rods, thence west two hundred and forty rods to the place of begin-ing, containing one hundred sixty acres, in the district of lands subject to sale at the land office at Duluth, Minn., in satisfaction of the attached scrip No. 19, letter D, issued under the act of Congress, July 17th, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILIE STRAM, [SEAL.]
By F. W. EATON,
Her Attorney-in-fact.

(Attest:) —— ——.

LAND OFFICE, DULUTH, MINN., *June 16th*, 1883.

We hereby certify, that the annexed script, No. 19, letter D, has been this day located on unsurveyed tract of land, as de-
48 scribed within, containing one hundred sixty (160) acres, agreeably to the act of Congress of July 17th, 1854, and by the party duly authorized to make such location.

J. R. CAREY, *Register.*
W. W. SPAULDING, *Receiver.*

Indorsed on back.

LAND OFFICE, DULUTH, MINNESOTA, *June* 16, 1883.

Richard Fagan, being duly sworn, says: I am acquainted with the unsurveyed tract of land described within by personal examination of the same on the tenth (9th) day of June, 1883, and that there was no person living on the same at that time, nor were there any improvements on it, except those of Orilie Stram, nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, 1883.
J. R. CAREY, *Register.*

Scrip Certificate No. 19 *D, Register and Receiver's No.* 188.

Sioux half-breed reserve at Lake Pepin.

Act of July 17th, 1854.

LAND OFFICE, *July* 21*st*, 1885.

We hereby certify, that the attached half-breed scrip, No. 19, D, letter D, was on this day adjusted by Orilie Stram, formerly Orilie Moreau, of St. Louis county, State of Minnesota.

G. G. HARTLEY, *Register.*
E. G. SWANTROM, *Receiver.*

I, Orilie Stram, formerly Orilie Moreau, of Crawford county, State of Wisconsin, hereby apply to locate, and do locate, the tract of land designated as follows, to wit: Lots number three (3), five (5) and six (6), and southeast quarter of northwest quarter of section thirty (30), in township number sixty-three (63) north, of range eleven (11) west, of fourth principal meridian (the above location is hereby made to adjust to the U. S. survey the location made June 16th, 1883, upon unsurveyed land of half-breed scrip No. 19, letter D, issued under the act of Congress July 17th, 1854), containing one hundred and sixty-one and $\frac{61}{100}$ acres, in the district of land subject to sale at the land office at Duluth, Minnesota, in satisfaction of the attached scrip No. 19, letter D, issued under the act of Congress, July 17th, 1854.

Witness my hand and seal this 21st day of July, 1885.

ORILIE STRAM, [SEAL.]
By F. W. EATON,
Attorney-in-fact.

Attest: N. B. THAYER.

49 Cancelled by department decision on February 18, 1889, affirming ours of March 7, 1887. See to R. and R., February 19, 1889.

E. S. E.

LAND OFFICE, DULUTH, *July* 21*st*, 1885.

We hereby certify that the annexed scrip No. 19, letter D, has been this day adjusted on the tract of land as described within, containing 161.61 acres, agreeably to the act of Congress of July 17th, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY, *Register*.
E. G. SWANSTROM, *Receiver*.

Excess receipt No. 7762 for 1 and $\frac{61}{100}$ acres at $1.25 per acre, $2.00.

EXHIBIT F.

Filed April 16th, 1886. R. and R. No. 187.

U. S. LAND OFFICE, DULUTH, MINN., *July* 21*st*, 1885.

Sioux half-breed scrip. Certificate 19, D. Register No. 188. Located by F. W. Eaton, attorney-in-fact for Orilie Moreau. Sec. 30, Twp. 63, N. R. 11, W.

Noted on scrip record H. Canceled by department decision of February 18th, 1889, affirming ours of March 7th, 1887. See to R. and R., February 19th, 1889. E. S. E., Div. H.

Posted in tract book Sept. 9th, 1885. Cancellation noted June 4th, 1889. 9 250. M. R. W.

86 99065-4.

Filed Sept. 12th, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

EXHIBIT 2.

(4-207.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 22, 1892.

I, Wm. M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of Sioux half-breed scrip, 19 E. R. and R. No. 188, July 21, 1885, located by F. W. Eaton, attorney-in-fact for Orilie Moreau, on lots 1 and 2 and S. W. ¼ of N. E. ¼ and N. W. ¼ of S. E. ¼ of sec. 30, township 62 N., range 11 W., in Duluth, Minn., land district, and accompanying papers appertaining thereto, are true and literal exemplifications from the files and records of this office.

U. S. G. L. O. Seal. In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

WM. M. STONE,
Acting Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March* 21, 1889.

I, S. M. Stockslager, Commissioner of the General Land Office, hereby certify that the notation across the face of the attached S. H. B. S. certificate No. 19 "E," Orilie Moreau, was erroneously made, said cancellation being of the location of said scrip R. & R. No. 187, Duluth, Minn., by reason of the decision of the Secretary of the Interior of February 18, 1889.

Said notation will be disregarded by the register and receiver at any district land office where said scrip may be presented for location.

U. S. G. L. O. Seal. In witness whereof, I hereunto subscribe my name and affix the seal of the General Land Office this 21st day of March, 1889.

S. M. STOCKSLAGER,
Commissioner.

19 *E.* *Certificate or Scrip, Acres* 160.

Sioux half-breed reserve at Lake Pepin.

(Not transferable or assignable.)

Issued in accordance with the provisions of the act of Congress, approved July 17, 1854, entitled "An act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota belonging to the half-breeds or mixed bloods of the Dacotah and Sioux nation of Indians and for other purposes.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS.

Five certificate- or pieces of scrip, No. 19 A to No. 19 E, A and B being each for 40, C for 80, and D and E each for 160 acres, issued in satisfaction of this claim for 480 acres.

[On the margin:] Canceled by dep't decision of Feb'y 18, 1889, affirming ours of M'ch 7, 1887. See to R. and R. Feb'y 19, 1889.

E. S. E.

51 Whereas, it has been duly reported in this office, by the commissioner appointed by the President to ascertain the number and names of the half-breeds and mixed bloods, entitled to share in the benefits of the grant or reservation above particularly mentioned, that Orilie Moreau, of about the age of 8 years, is one of the said half-breeds or mixed bloods of the said Dacotah or Sioux nation of Indians, specified in the said act of Congress, and as such is entitled to receive a certificate, or scrip*t pro rata*, in exchange for her right, title and interest in and to the said reservation of land, lying on the west side of Lake Pepin and the Mississippi river, in the said Territory of Minnesota, which was set apart for the benefit of said half-breeds and mixed bloods by the 9th article of the treaty of Prairie du Chien, of July 15, 1830.

And whereas, the said report of the said commissioners has been approved and confirmed by the President of the United States; and the said Orilie Moreau has duly and formally relinquished to the United States all her right, title, and interest in and to the said reservation of land, as by her instrument of relinquishment sufficiently appears:

Therefore, be it known, that this certificate or scrip, issued by authority aforesaid, will entitle the said Orilie Moreau to locate, at the proper land office, the quantity of one hundred and sixty acres of land as a part of her four hundred and eighty acres claim upon any of the lands within the said reservation that were not occupied on the 17th of July, 1854, by actual and *bona fide* settlers of the said half-breeds or mixed bloods, or such other persons as had at that date, or prior thereto, gone into said Territory, by authority of law—or upon any other unoccupied lands, subject to pre-emption or private sale, or upon any other unsurveyed lands not reserved by Government, upon which they have respectively made improvements.

This certificate or scrip is not by law transferable, and any assignment or conveyance of the same is therefore void.

Given under my hand and the seal of the department at
[SEAL.] Washington, this twenty-fourth day of November, A. D. eighteen hundred and fifty-six.

GEO. W. MANYPENNY,
Commissioner.

Indorsed on the back: Delivered to Amable Moreau, father, March 24, 1857.

Know all men by these presents: that Orilie Stram, formerly Orilie Moreau, and Roman Stram, her husband, of Crawford county, and State of Wisconsin, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Frank W. Eaton of Saint Louis county, State of Minnesota, our true
52 and lawful attorney for us and — our name, place and stead, to select and locate at any land office in the United States the lands to which I may be entitled by reason of the "Sioux half-breed Lake Pepin reserve scrip," to wit: number 19, letter "E," for 160 acres, said scrip being granted and issued to the said Orilie Moreau, now Orilie Stram, in accordance with the provisions of an act of Congress, approved July 17, 1854, entitled An act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota, belonging to the half-breeds or mixed bloods of the Dakota or Sioux nation of Indians and for other purposes, and on such location to ask and receive the patent therefor, and if the said scrip is located on unsurveyed lands, my said attorney is hereby authorized to make any improvements required — my name and stead, and for my own personal use and benefit, or do any other act or thing necessary to perfect and secure a permanent and *bona fide* location, as much so as though I was personally present, hereby declaring all lawful acts of my said attorney in the premises of the same valid and binding force as if done personally by ourselves.

And we do further ordain and declare that the said Frank W. Eaton is hereby irrevocably vested with all such power and authority as we might or could exercise personally if present and acting in the premises, with full power of substitution and revocation, hereby ratifying and confirming whatever our said attorney, or his substitute appointed by him, by virtue hereof, may lawfully do in the premises.

In witness whereof, we have hereunto set our hands and seals this twenty-fifth day of May, A. D. 1883.

ORILIE STRAM, [SEAL.]
Formerly OR-LIE MOREAU, *Scripp.* [SEAL.]
ROMAN STRAM. [SEAL.]

Signed, sealed and delivered in presence of—
JAC. RAFFAUF.
LYDIA LEROUX.

STATE OF WISCONSIN, } ss:
County of Crawford, }

On this 25th day of May, A. D. 1883, came before me Orilie Stram formerly Orilie Moreau and Roman Stram, her husband, to me personally known to be the persons who executed the foregoing power of attorney, and acknowledged that they executed the same for the uses and purposes therein expressed.

[NOTARIAL SEAL.] JAC. RAFFAUF,
Notary Public, Crawford County, State of Wisconsin.

Notarial certificate. "The Courier" print.
7—308

53 STATE OF WISCONSIN, } ss:
County of Crawford, }

OFFICE OF THE CLERK OF CIRCUIT COURT.

I, W. G. Campbell, clerk of the circuit court of the county of Crawford, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Jac. Raffauf, Esquire, (May 25, 1883,) whose name appears subscribed to the annexed instrument, was at the date thereof a notary public within and for said State, residing in said county, duly appointed and qualified, and empowered by the laws of said State to administer oaths, take acknowledgements of deeds, and perform such other duties as by the law of nations or according to commercial usage may be performed by notaries public; and that to his acts and attestations, as such, full faith and credit are and ought to be given in court and out. I further certify that I verily believe said signature, purporting to be his, is genuine; that the seal thereto attached is a correct impression of his official seal; and that said instrument is executed and acknowledged according to the laws of said State.

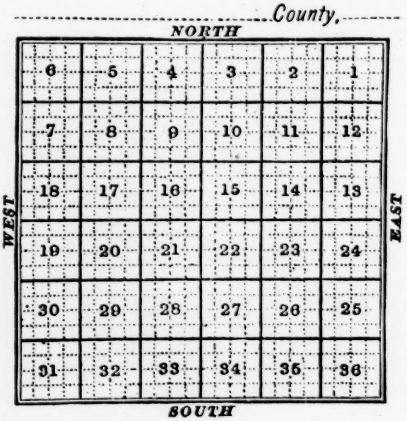
Seal of Circuit Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Prairie du Chien, in said county and State, on this 20th day of June, A. D. 1883.

W. G. CAMPBELL,
Clerk of Circuit Court as foresaid.

EXHIBIT 2—7.

Township.....*Range*.....
.....*County*,.....



54 U. S. Land Office.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

In the matter of the application of Orilie Stram to locate Sioux half-breed scrip No. 19, letter "E," for 160 acres of unsurveyed land.

Richard Fagan, being first duly sworn, on his oath says that he is acquainted with Frank W. Eaton and with the land described above, that he has been upon said land and knows the character of the improvements thereon, that such improvements consist of a one-story dwelling-house, fourteen by sixteen feet, with doors and windows, and shingle roof, that there is cleared on said land about one-half acre.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, A. D. 1883.

J. R. CAREY, *Register.*

U. S. Land Office, Duluth, Minn.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

In the matter of the application of Orilie Stram, formerly Orilie Moreau, to locate Sioux half-breed scrip No. 19, letter "E," for one hundred sixty acres of land.

Frank W. Eaton, being duly sworn, on his oath says, that he is the attorney-in-fact of said Orilie Stram, and is duly authorized to locate for her the scrip above described, and that he has located the same upon the following-described unsurveyed land in the Duluth land district, to wit: Starting at the quarter post on the east line of section twenty-five (25), in township sixty-three (63) north, of range twelve (12) west, of the fourth principal meridian, thence east two hundred and forty rods (240) to the place of beginning of the land located, thence south eighty (80) rods, thence east eighty (80) rods, thence north eighty (80) rods, thence east eighty (80) rods, thence north one hundred sixty rods, thence west eighty (80) rods, thence south eighty (80) rods, thence west eighty (80) rods, thence south eighty (80) rods, to the place of beginning, which said land when surveyed will be described as follows, to wit: The southeast quarter of the northeast quarter (S. E. ¼ of N. E. ¼), the northeast quarter of the southeast quarter (N. E. ¼ of S. E. ¼), of section thirty (30), and the west half of the northwest quarter (W. ½ of N. W. ¼), of section twenty-nine (29), in town. sixty-three (63) north, of range eleven (11) west, of the fourth principal meridian; that he has, as such attorney, built upon said lands a dwelling-house fourteen by sixteen feet, one story high, built of timber and covered with split shingles, with doors and windows, and has cleared for cultivation one-half acre of said land.

That said improvements were made under the personal direction of said Orilie Stram, and for her personal use and benefit and under and by authority of said power of attorney hereto attached.

FRANK W. EATON.

Sworn and subscribed before me this 16th day of June, A. D. 1883.

J. R. CAREY, *Register.*

U. S. Land Office, Duluth, Minn.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Richard Fagan, being duly sworn, on his oath says, that he is acquainted with Frank W. Eaton, the affiant in the affidavit hereto attached, that he is acquainted with the land described in said affidavit and has been on the said land, that he has read said affidavit and knows the contents thereof, and knows of his own knowledge that the improvements therein described have been made as therein described, and are now on the said land, and the statements in said affidavit made in regard to said improvements are correct.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, A. D. 1883.

J. R. CAREY, *Register.*

Scrip Certificate No. 19 *E, Register and Receiver's No.* —.

Sioux half-breed reserve at Lake Pepin.

Act of July 17, 1854.

LAND OFFICE, DULUTH, MINN., *June* 16, 1883.

We hereby certify, that the attached half-breed scrip No. 19, letter E, was on this day received at this office from Orilie Stram of Crawford county, State of Minnesota, by Frank W. Eaton, her attorney-in-fact.

J. R. CAREY, *Register.*
W. E. SPALDING, *Receiver.*

I, Orilie Stram, formerly Orilie Moreau, of Crawford county, State of Wisconsin, hereby apply to locate, and do locate, the unsurveyed tract of land designated as follows, to wit: Starting at the quarter post on the east line of section twenty-five (25) in town. sixty-three (63) north of range twelve (12) west of the fourth principal meridian, thence east two hundred forty rods to the place of beginning of the land located, thence south eighty (80) rods, thence east eighty
56 rods, thence north eighty rods, thence east eighty rods, thence north one hundred sixty rods, thence west eighty rods, thence

south eighty rods, thence west eighty rods, thence south eighty rods to the place of beginning, containing one hundred sixty (160) acres in the district of land subject to sale at the land office at Duluth, Minn., in satisfaction of the attached scrip*t* No. 19, letter E, issued under the act of Congress, July 17, 1854.

Witness my hand and seal this 16th day of June, 1883.

ORILIE STRAM, [SEAL.]
By F. W. EATON,
Her Attorney-in-fact.

Attest: —— ——.

LAND OFFICE, DULUTH, MINN., *June* 16, 1883.

We hereby certify that the annexed scrip No. 19, letter D, has been this day located on the unsurveyed tract of land as described within, containing one hundred sixty (160) acres, agreeable to the act of Congress of July 16, 1854, and by the party duly authorized to make such location.

J. R. CAREY, *Register.*
W. W. SPAULDING, *Receiver.*

Indorsed on back.

LAND OFFICE, DULUTH, MINN., *June* 16, 1883.

Richard Fagan, being duly sworn, says: I am acquainted with the unsurveyed tract of land described within, by personal examination of the same on the ninth day of June, 1883, and that there was no person living on the same at that time, nor were there any improvements on it, except those of Orilie Stram, nor any person claiming said tract.

RICHARD FAGAN.

Sworn and subscribed before me this 16th day of June, 1883.
J. R. CAREY, *Register.*

Scrip Certificate No 19 *E, Register and Receiver's No.* 187.

Sioux half-breed reserve at Lake Pepin.

Act of July 17, 1854.

LAND OFFICE, DULUTH, MINN., *July* 21, 1885.

We hereby certify that the attached half-breed scrip, No. 19 D, letter D, was on this day adjusted at this office by Orilie Moreau of St. — county, State of Minnesota.

G. G. HARTLEY, *Register.*
E. G. SWANSTROM, *Receiver.*

57 I, Orilie Stram, formerly Orilie Moreau, of Crawford county, State of Wisconsin, hereby apply to locate, and do locate, the tract of land designated as follows, to wit: Lots number one (1) and two (2) and southwest quarter of northeast quarter and

northwest quarter of southeast quarter of section thirty (30) in township number sixty-three (63) north of range eleven (11) west, of 4th principal meridian (the above location is hereby made to adjust to the U. S. survey, the location made June 16th, 1883, upon unsurveyed land of half-breed scrip No. 19, letter E, issued under the act of Congress July 17th, 1854), containing one hundred and fifty-two acres, in the district of lands subject to sale at the land office at Duluth, Minn., in satisfaction of the attached scrip No. 19, letter E, issued under the act of Congress, July 17th, 1854.

Witness my hand and seal this 21st day of July, 1885.

ORILIE STRAM, [SEAL.]
By F. W. EATON,
Her Attorney-in-fact.

Attest: N. B. THAYER.

LAND OFFICE, DULUTH, MINN., *July 21st*, 1885.

We hereby certify, that the annexed scrip No. 19, letter E, has been this day located on the — tract of land, as described within, containing 152 acres, agreeably to the act of Congress of July 17, 1854, and by the party duly authorized to make such location.

G. G. HARTLEY, *Register.*
E. G. SWANSTROM, *Receiver.*

[On the margin:] Cancelled by dep't decision of Feb'y 18, 1889, affirming office decision of March 7, 1887. See to R. and R. Feb'y 19, 1889.

EXHIBIT "G."

Filed Apr. 14, '86. R. & R. No. 188.

U. S. LAND OFFICE, DULUTH, MINN., *July* 21, 1885.

Sioux half-breed scrip, certificate 19 E.

Register's No. 187. Located by F. W. Eaton, attorney-in-fact for Orilie Moreau.

Sec. 30, t'p 63 N., R. 11 W.

Noted on scrip record.

"H."

Cancelled by dep't decision of Feb'y 18, 1889,
Affirming ours of March 7, '87. See to R. & R. Feb'y 19, '89.

E. S. E., *Div.* "*H.*"

58 Posted on tract book Sept. 9, '85.
Cancellation noted June 4, '89. J. M. R.

M. R. W.

Filed Sept. 12, 1892. Oscar B. Hill-, clerk, by G. L. Bloomer, deputy.

9-2 30, 86-99065-15.

EXHIBIT 3.

(4–207.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 22, 1892.

I, Wm. W. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of record as shown by tract book, relative to S. W. 4 N. E. 4 and lots 1 and 2 of section 30, township 63 N., range 11 W., in Duluth, Minnesota, land district, is a true and literal exemplification from the files and records of this office.

In testimony whereof, I have hereunto subscribed my name and cause the seal of this office to be affixed, at the city of Washington, on the day and year above written.

U. S. G. L. O. Seal.

W. M. STONE,
Acting Commissioner of the General Land Office.

59

Township No. Sixty-three, Range No. Eleven, District of Duluth, Minn.

Description of tract. Part of section.	Cont's. Section.	Township.	Range.	Acres.	Tenths.	Rate per A Dollars.	Cents.	Pure'e money. Dollars.	Cents.	Name of purchaser	Date of sale.	No. of R. & cer. of P.	To whom patented.	Date of patent.	Where recorded. Volume.	Page.
Sol. add'l bd. S. W. N. E and lots 1 and 2	30	63	11	112	00	.....	.....	10	....	Thomas Reed	Feb. 23, 1889	4294	Sol. add'l to N. E. S. E. 28-17-10, Omaha, Neb. Date of certificate, Nove. 24, 1856.	E. C. 1420. Feb. 23, 1389. Application, July 16, 1883.	Duluth.	
S. H. B. S.....	"	"	"	152	90	19 E.	160	.....	....	A. Loe, by F. W. Eaton, for Orrie Moreau.	Date of adjustment, July 21,'85.	187			Cancelled by "H," Feb. 18, '89.	

As to lots 1 and 2, S. W. ¼ N. E. ¼ N. W. ¼ S. E. ¼; lots 3, 5, 6, and S. E. N. W., see letter "1889," 65761 (Hobbs), concerning motion for review of dep't'l decision of Feb. 18, 1889, case of Hyde and McDonald against Stram and Eaton. This note made Dec. 2, 1889. Filed Sept. 12, 1892.

OSCAR B. HILLIS, *Clerk*,
By O. L. BLOOMER, *Deputy*.

60 EXHIBIT 4.

(4–207.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August* 24, 1892.

I, I. R. Conwell, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of register's letter, dated Duluth, Minn., April 13, 1889, with appeal of Charles P. Wheeler and accompanying affidavits to same, as well as Valentine scrip E 270 and an application to locate the same on the S.W. 4, N. E. 4, of sec. 30, T. 63 N., R. 11 W., Duluth, Minn., land district, are a true and literal exemplification from the files and records of this office.

U.S. G. L. O. Seal.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

I. R. CONWELL,
Acting Commissioner of the General Land Office.

Before the register and receiver of the United States land office at Duluth, Minnesota.

In the matter of the application of Charles P. Wheeler to locate with special certificate of location, Thomas B. Valentine, act of April 5th, 1872, No. E 270, the southwest quarter of the northeast quarter, section thirty (30), town. sixty-three (63) north, of range eleven (11) west, of the fourth principal meridian, in the district of lands subject to sale at the land office at Duluth, Minnesota, dated March 23d, 1889.

Appeal to the Commissioner of the General Land Office from the decision of the register and receiver, dated February 23, 1889, rejecting the said application.

To the register and receiver of the United States land office, Duluth, Minnesota:

Please take notice—

That the applicant, Charles P. Wheeler, will and does hereby appeal to the Commissioner of the General Land Office from your decision of date February 23, 1889, rejecting its said application to locate the above-described premises, and files herewith his specifications of error.

W. H. DRAPER, *Attorney.*

61 *Specifications of Error.*

1. By the decision of the Honorable Secretary of the Interior, dated February 18th, 1889, and the instructions thereunder by the

Commissioner of the General Land Office, the said premises became and were, on the 23rd day of February, 1889, public lands of the United States, subject to disposition under general laws.

On that date and before any other applicant had appeared and offered to file, make application for or to appropriate said pæmises, the appellant herein tendered to the register and receiver his application in due form to locate said premises with said special certificate of location, Thomas B. Valentine, act of April 5th, 1872, No. "E," 270. It was error not to have received said application and to have allowed an entry and issued a certificate of location under the same.

2. It was error to have admitted the application to locate said premises offered by one Thomas Reed, inasmuch as said Reed was not the first legal applicant to locate said lands, and because, if said Reed offered any legal application whatever, it was second in point of time to that of appellant, Charles P. Wheeler.

3. Under the law, the first legal applicant presenting himself to the register and *recorder* and tendering legal application, is entitled to an entry of public lands, after the cancellation of a previously existing entry or claim thereupon or thereto. The appellant, Charles P. Wheeler, being such first legal applicant, was entitled to an entry of the same. It was error to hold and decide, and so holding and deciding to admit such application of said Wheeler, and to issue to him a certificate of location.

4. In order to constitute a legal application to enter lands under the laws of the United States there must not only be a tender of the scrip proposed to be located, but also a legal tender of the fees and commission to which the register and receiver are lawfully entitled.

The said Thomas Reed at the time of his so-called application, made no such tender, his application was therefore illegal and not entitled to recognition even in the absence of a prior legal application.

It was error not to so hold and decide, and so holding and deciding to reject his application for the premises in controversy.

5. It was error not to admit the application of the appellant, Wheeler, and reject the application of said Reed, upon facts of which the register and receiver should have taken notice judicially,
62 and which are established by the affidavits of C. P. Wheeler, Joseph Sellwood, Joseph H. Chandler, David Adams, John H. Derby, W. C. McComber, —— —— and W. N. Draper, filed herewith to accompany this and other appeals this day taken by said Wheeler, and by him as attorney-in-fact for David Moyer and Warren Wing, reference to which is hereby made.

6. The Secretary's decision referred to, and instructions of the Commissioner issued thereunder, upon the receipt of the same by the register and receiver, operated in law to entirely extinguish all prior claims to the land, and it, *eo instanti*, became subject to disposition under general laws. The appellant, Wheeler, was the first legal applicant for the same. His application should have been

allowed. A certificate of location should have been issued to him, and all other applications should have been rejected and denied.

7. The appellant therefore prays that instructions to the register and receiver be issued by the Commissioner directing them to cancel the certificate of location issued to the said Thomas Reed, and further directing them to admit to record as of the date of its tender, the application of the appellant, Wheeler, to locate the said premises, and to issue to him as of that date a certificate of location.

W. N. DRAPER, *Attorney.*

Indorsed on back.

Appeal of Charles P. Wheeler to Commissioner of Gen'l Land Office. Valentine scrip E 270, S. W. ¼ N. E. 4, sec. 30-63-11.
Filed March 23, 1889.

W. COLVILL, *Register.*

1887–49351.

Special Certificate of Location.

Thomas B. Valentine; act of April 5th, 1872.

No. E–270.

LAND OFFICE, DULUTH, MINN., *Feb'y* 19, 1889.

We hereby certify that the attached special certificate of location—Thomas B. Valentine—act of April 5th, 1872—was on this — day of February, 1889, received at the office from Charles P. Wheeler, of New York.

—— ——, *Register.*
—— ——, *Receiver.*

I, Charles P. Wheeler, of New York, hereby apply to locate and do locate the southwest quarter of the northeast quarter of section thirty, town. sixty-three north, of range eleven west, of the 4th principal meridian, in the district of lands subject to sale at
63 the land office at Duluth, containing forty acres, in satisfaction of the attached special certificate of location No. E 270, issued under the act of April 5th, 1872.

Witness my hand this 19th day of February, 1889.

CHARLES P. WHEELER.

Attest:

—— ——, *Register.*
—— ——, *Receiver.*

LAND OFFICE, DULUTH, MINN., *February* —, 1889.

We hereby certify that the above location is correct, being in accordance with law and instructions.

—— ——, *Register.*
—— ——, *Receiver.*

Indorsed on back.

UNITED STATES LAND OFFICE,
DULUTH, MINN., *Feb'y 19th*, 1889.

The within application rejected for conflict with Sioux half-breed scrip entry—reg. and rec. No. 187—dated July 21st, 1885, Orilie Stram, per Frank Eaton, attorney-in-fact—for the same (with other) land.

W. COLVILL, *Register.*

Thirty days allowed for appeal. Fees tendered in full.

C. P. MAGINNIS, *Receiver.*

Filed Feb'y 19, 1889.

W. COLVILL, *Register.*

Special Certificate of Location.

Thomas B. Valentine; act of April 5th, 1872.

No. 27.

No. E–270.

LAND OFFICE, DULUTH, MINN., *February* 23, 1889.

We hereby certify that the attached special certificate of location—Thomas B. Valentine—act of April 5th, 1872—was on this 25th day of February, 1889, received at this office from Charles P. Wheeler, of New York.

—— ——, *Register.*
—— ——, *Receiver.*

I, Charles P. Wheeler, of New York, hereby apply to locate and do locate the southwest quarter of the northeast quarter of section thirty, town. sixty-three north, of range 11 west, of the 4th prin-
64 cipal meridian, in the district of lands subject to sale at the land office at Duluth, Minn., containing forty acres in satisfaction of the attached special certificate of location No. E-270 issued under the act of April 5th, 1872.

Witness my hand this 23rd day of February, 1889.

CHARLES P. WHEELER.

Attest:

—— ——, *Register.*
—— ——, *Receiver.*

LAND OFFICE, DULUTH, MINN., *February*, 1889.

We hereby certify that the above location is correct, being in accordance with the law and instructions.

—— ——, *Register.*
—— ——, *Receiver.*

Indorsed on back.

UNITED STATES LAND OFFICE,
DULUTH, MINN., *Feb'y 23d*, 1889.

The within application filed this day is hereby rejected for conflict with prior entry—by final homestead entry—reg. & rec. No. 1420, Feb. 23d, 1889, Thomas Reed, for same with other land.

Thirty days allowed for appeal.

W. COLVILL, *Register.*

Fees tendered in full.

C. P. MAGINNIS, *Receiver.*

Filed Feb'y 23d, 1889, at one-half of one minute past 9 o'clock a. m.

W. COLVILL, *Register.*

Norline F. Brisac
to
Ralph C. Harrison.

Know all men by these presents, that I, Norline F. Brisac, of the United States of America, heretofore a resident of the city and county of San Francisco, State of California, but at present residing at Lima, in the Republic of Peru, has made, constituted and appointed, and do hereby make, constitute and appoint Ralph C. Harrison, of the said city and county of San Francisco, State of California, my true and lawful attorney, for me, and in my name, place and stead, to bargain, sell, transfer and assign and execute any necessary instrument of assignment, sale and transfer thereof, any or all of those special certificates of location of forty acres each, upon the public lands of the United States which were issued
65 March 28th, 1874, to Thomas B. Valentine under the provisions of the act of Congress approved April 5th, 1872, entitled "An act for the relief of Thomas B. Valentine," which said certificates are more particularly designated by the letter E, and numbered respectively 3, 10, 110, 111, 112, 113, 114, 115, 116, 117, 118 and 270 and which were distributed to me as a legatee under the will of Felix Brisac, deceased, by an order of the superior court of the State of California, in and for the city and county of San Francisco, made on the 11th day of January, A. D. 1884, giving and granting unto my said attorney full power and authority to do and execute any act whatever requisite or necessary in or about the premises, together with full power of substitution and revocation, and hereby ratifying and confirming all that my said attorney or his substitute shall do by virtue hereof.

In witness whereof I have hereunto set my hand and seal, at Lima, in Peru aforesaid, this twelfth day of March, in the year one thousand eight hundred and eighty-four.

NORLINE F. BRISAC. [SEAL.]

In presence of—
H. M. BRENT,
Acting U. S. Consul.

CONSULATE OF THE UNITED STATES OF AMERICA,
CALLAO, PERU, 12 *March*, 1884.

I, the undersigned, acting consul of the United States of America for Callao and the dependencies thereof, do hereby certify that on the day and year above written, personally appeared before me Norline F. Brisac, to me personally known, and in my presence affixed his signature to the foregoing power of attorney, declaring the same to be his free will and deed.

Seal Consulate of the United States, Callao, Peru.

In witness whereof I hereunto set my hand and affix the seal of this consulate, date *et supra*.

H. M. BRENT,
Acting United States Consul.

A true copy of the original record, at the request of Edward Pallitze, May 11, 1887, at 25 minutes past 1 p. m.

[SEAL.]

A. T. SPOTTS,
County Recorder.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss*:

I, A. T. Spotts, county recorder, do hereby certify that the annexed is a whole, true and correct copy of an original record, as will appear by reference to Book 47 of Powers of Attorney, page 151, now in my office, and that said copy has been compared with the original and is a correct transcript therefrom.

66

Witness my hand and official seal this 12th day of May, A. D. 1887.

[SEAL.]

A. T. SPOTTS,
County Recorder,
Per —— ——, *Deputy.*

On back:

Norline F. Brisac to Ralph C. Harrison. Certified copy of power of attorney, March 12th, 1884.

In the Superior Court of the State of California in and for the City and County of San Francisco.

In the Matter of the Estate of FELIX BRISAC, Deceased.

The application of the executors of the last will and testament of Felix Brisac, deceased, for an order directing them to pay over and deliver to Norline F. Brisac and Belnore F. Brisac the legacy of certain "Valentine scrip," so called, which was bequeathed to *to* them by said testator, came on for a hearing before this court this day, and it having been shown to the satisfaction of the court that the said Felix Brisac died at the city and county of San Francisco, State of California, on the 14th of January, 1882, leaving a last will and testament; that thereafter the said will was admitted to probate in this court, and on the 24th day of February, A. D. 1882, letters testamentary thereon were issued out of this court to Ralph

C. Harrison, Joseph M. Shotwell and Morris M. Estee as the executors thereof, and that the said executors are still acting under such authority; that the said Felix Brisac was at the time of his death the owner of twenty-three (23) special certificates of location, of forty acres each, upon the public lands of the United States, which were issued March 28th, 1874, to Thomas B. Valentine, under the provisions of the act of Congress approved April 5th, 1872, entitled "An act for the relief of Thomas B. Valentine," which said certificates are more particularly designated by the letter "E," and numbered respectively 3, 10, 110, 111, 112, 113, 114, 115, 116, 117, 118, 222, 224, 241, 252, 256, 257, 259, 260, 262, 268, 270; that by this aforesaid last will and testament the said Felix Brisac gave and bequeathed the same to his two sons, Norline F. Brisac and Belmore F. Brisac, to be divided equally between them, and to be thereafter held by them respectively, in their own right: that more than one year has elapsed since the issuance of said letters testamentary, and that the said legatees are entitled to re-
67 ceive their said legacy; it is now by the court ordered and decreed that of the aforesaid certificates of location those which are numbered respectively 3, 10, 110, 111, 112, 113, 114, 115, 116, 117, 118, be, and the same are hereby, distributed to the aforesaid Norline F. Brisac, and that the aforesaid executors deliver the same to him, and also that of the said certificates of location those which are numbered respectively 222, 224, 241, 244, 252, 257, 259, 260, 262, 268, be, and the same are hereby distributed to the aforesaid Belmore F. Brisac, and that the executors aforesaid deliver the same to him, and also that of the said certificates of location that which is numbered 270 be, and the same is hereby distributed to the said Norline F. Brisac and Belmore F. Brisac, and that the said executors aforesaid deliver the said certificates to them, and that upon the delivery of the said certificates to the said Norline F. Brisac and the said Belmore F. Brisac they shall thereafter be held by them respectively in their own right.

Done in open court at San Francisco, California, this 11th day of January, A. D. 1884.

J. V. COFFEY,
Judge of the Superior Court.

Office of the County Clerk of the City and County of San Francisco, *ss:*

I, William T. Sesnon, county clerk of the city and county of San Francisco and *ex officio* clerk of the superior court thereof, do hereby certify the foregoing to be a full, true and correct copy of the decree and order of said court, now on file and of record in my office, distributing to Norline F. Brisac and Belmore F. Brisac a portion of the estate of Felix Brisac, deceased, bequeathed to them and therein described, and directing the executors of the last will and testament of said Felix Brisac to deliver the same to them.

[SEAL.] Witness my hand and the seal of said court, this 21st day of January, A. D. 1884.

WILLIAM T. SESNON, *Clerk*,
By J. C. HAMILTON,
Deputy Clerk.

For and in consideration of the sum of five hundred dollars, to us in hand paid, we, Norline F. Brisac and Belmore F. Brisac, of the city and county of San Francisco and State of California, do hereby sell and assign unto Charles P. Wheeler, of the — of New York, and to his heirs and assigns forever, the annexed special certificate of location, E. No. 270, issued to Thomas B. Valentine, and we do hereby authorize our said assignee to locate the same and receive a patent for the land so located.

68 Witness our hands and seals this twenty-third day of April, 1884.

B. F. BRISAC. [SEAL.]
NORLINE F. BRISAC, [SEAL.]
By RALPH C. HARRISON,
His Attorney-in-fact.

Attest:
JAMES MASON.
E. A. THARP.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On this twenty-third day of April, A. D. eighteen hundred and eighty-four, before me, E. H. Tharp, a notary public, in and for said city and county, personally appeared Belmore F. Brisac, known to me to be the person whose name is subscribed to the above instrument, and he duly acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

E. H. THARP, [SEAL.]
Notary Public.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On this twenty-third day of April, A. D. one thousand eight hundred and eighty-four, before me, E. H. Tharp, a notary public, in and for said city and county, residing therein duly commissioned and qualified, personally appeared Ralph C. Harrison, known to me to be the person whose name is subscribed to and who executed the within instrument as the attorney-in-fact of Norline F. Brisac. And the said Ralph C. Harrison duly acknowledged to me that he subscribed the name of the said Norline F. Brisac thereto as principal, and his own name as attorney-in-fact.

Witness my hand and official seal.

E. H. THARP, [SEAL.]
Notary Public.

For and in consideration of the sum of four hundred ($400) dollars, to me in hand paid, I, Thomas B. Valentine, of the city and county of San Francisco and State of California, to whom the within special certificate of location E. No. 270, was issued, do hereby sell and assign unto Felix Brisac, of San Francisco county and State of California, and to his heirs and assigns forever the said special
69 certificate of location E, No. 270, and I do hereby authorize him to locate the same and receive a patent for the land so located.

Witness my — and seal this twenty-eighth day of August, A. D. 1878.

T. B. VALENTINE. [SEAL.]

Attest:
SAM'L S. MURFEY.
D. B. FRANCIS.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

On this twenty-eighth day of August, A. D. eighteen hundred and seventy-eight, before me, Sam'l S. Murfey, a notary public in and for said city and county, personally appeared Thomas B. Valentine, known to me to be the person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and
[SEAL.] affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

SAM'L S. MURFEY,
Notary Public.

Special Certificate of Location.

E–279. Act of April 5, 1872 (17 Stats., p. 649).

Claim of Thomas B. Valentine.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March 28th*, 1874.

Whereas, by act of Congress approved April 5, 1872, entitled "An act for the relief of Thomas B. Valentine," it was enacted—

That the ninth circuit court of the United States, of California, be, and hereby is, authorized and required to hear and decide upon the merits, the claim of Thomas B. Valentine, claiming title, under a Mexican grant of Juan Miranda, to a place called the Rancho Arroyo de San Antonio, situate in the county of Sonoma and State of California, in the same manner, and with the same jurisdiction, as if the claim to the said tract of land had been duly presented to the board of land commissioners under the provisions of the act

entitled "An act to ascertain and settle the private land claims in the State of California," approved March third, eighteen hundred and fifty-one, and an appeal had been duly taken from their decision to the district court of California by the said Thomas B. Valentine.

70 That on the said hearing any testimony heretofore taken before the said board of commissioners in relation to said claim on behalf of the said claimant, or of the United States, may be read, subject to all just exceptions to its competency, and additional testimony, on either part may be taken, under the order and direction of said circuit court, as to the validity and extent of said claim.

That an appeal shall be taken from the final decision and decree of the said circuit court to the Supreme Court of the United States by either party, in accordance with the provisions of the tenth section of said act of March third, eighteen hundred and fifty-one, within six months after the rendition of such final decision; and a decree under the provisions of this act, in favor of said claim, shall not affect any adverse right or title to the lands described in said decree; but in lieu thereof, the claimant, or his legal representatives, may select, and shall be allowed, patents for an equal quantity of the unoccupied and unappropriated public lands of the United States, not mineral, and in tracts not less than the subdivisions provided for in the United States land laws, and if unsurveyed when taken, to conform, when surveyed, to the general system of United States land surveys; and the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, shall be authorized to issue scrip, in legal subdivisions, to the said Valentine, or his legal representatives, in accordance with the provisions of this act: Provided, That no decree in favor of said Valentine shall be executed nor be of any force or affect against any person or persons; nor shall land scrip or patents issue as hereinbefore provided, unless the said Valentine shall first execute and deliver to the Commissioner of the General Land Office a deed conveying to the United States all his right, title, and interest to the lands covered by said Miranda grant.

And whereas, the said Thomas B. Valentine did, on the 5th day of June, A. D. 1872, pursuant to the act aforesaid, file in the said circuit court of the United States, a petition praying the said court to hear and decide upon the merits of his claim to the said Rancho Arroyo de San Antonio; whereupon the said court, on the 6th day of January, A. D. 1873, in the cause entitled Thomas B. Valentine *vs.* The United States, rendered the following decree:

In this case, on hearing the proofs and allegations, it is ordered, adjudged and decreed that the said claim of the petitioner is valid, and that the same be and hereby is confirmed; but this decree and confirmation are hereby made subject to the restrictions and limitations prescribed in the act of Congress entitled "An act for the relief of Thomas B. Valentine," approved April 5, 1872.

71 The land of which confirmation is made, is the same which was granted by Manuel Micheltorena, in the name of the

Mexican government, to Juan Miranda, on the 8th day of October, 1844, and on which he resided in his lifetime, and is known by the name of Rancho Arroyo de San Antonio, and bounded by the laguna and arroyo of the same name, and the pass and estero of Petaluma; and is in extent three square leagues, if that quantity is to be found within the exterior boundaries, and no more; and if a less quantity is included in said boundaries, than said lesser quantity is confirmed.

LORENZO SAWYER,
Circuit Judge.

Which said decree was affirmed by the Supreme Court of the United States on the 6th day of January, A. D. 1874, as follows:

UNITED STATES OF AMERICA, *ss:* [L. S.]

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of California, Greeting:

Whereas, lately in the circuit court of the United States for the district of California, before you, or some of you, in a case between Thomas B. Valentine, complainant, and the United States, defendant, wherein the decree of the said circuit court, entered in said cause on the 6th day of January, A. D. 1873, is in the following words, viz:

"In this case, on hearing the proofs and allegations, it is ordered, adjudged and decreed that the said claim of the petitioner is valid, and that the same be, and hereby is, confirmed; but that this decree and confirmation are hereby made subject to the restrictions and limitations prescribed in the act of Congress, entitled, 'An act for the relief of Thomas B. Valentine,' approved April 5, 1872. The land of which confirmation is made is the same which was granted by Manual Micheltorena, in the name of the Mexican government, to Juan Miranda, on the 8th day of October, 1844, and on which he resided in his lifetime, and is known by the name of Rancho Arroyo de San Antonio, and bounded by the laguna and arroyo of the same name, and the pass and estero of Petaluma; and is in extent three square leagues, if that quantity is to be found within the exterior boundaries, and no more; and if a less quantity is included in said boundaries, then said lesser quantity is confirmed," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears: And whereas, in

72 the present term of October, in the year of our Lord one thousand eight hundred and seventy-three, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and on the motion of Mr. Assistant Attorney General Goforth, of counsel for the appellants, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

6TH JANUARY, 1874.

You, therefore, are hereby commanded that such proceeding be had in said cause as, according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Nathan Clifford, senior associate justice of said Supreme Court, the seventh day of January, in the year of our Lord one thousand eight hundred and seventy-four.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

And whereas, it appears that the tract of land described in the said decree, affirmed as aforesaid, contains an -*era* of 13,316 acres, or three square leagues of land.

And whereas, pursuant to the aforesaid act of Congress, there has been deposited in the General Land Office a deed bearing date December 17th, A. D. 1873, by which the said Thomas B. Valentine and Maria A., his wife, conveyed to the United States all their rights, title or interest in the said Rancho Arroyo de San Antonio, above described, which said deed was recorded on the 22d day of January, A. D. 1874, in the office of the recorder of deeds for the county of Sonoma, State of California.

Now, therefore, be it known, that on surrender of this certificate to the register of any land office of the United States, the said Thomas B. Valentine, or his legal representatives, shall be entitled to enter, in part satisfaction of said claim, the quantity of forty acres of land upon any of the "unoccupied and unappropriated public lands of the United States, not mineral, and in tracts not less than the subdivisions provided for in the United States land laws, and if unsurveyed when taken, to conform when surveyed to the general system of the United States land surveys."

By direction of the Secretary of the Interior.

WILLIS DRUMMOND,
Commissioner.

UNITED STATES LAND OFFICE,
DULUTH, MINN., *Apr.* 13, 1889.

SIR: We have the honor herewith to submit the appeal of Charles P. Wheeler, filed in this office March 23d, 1889, from our re-
73 jection of this application—filed Feb'y 23d, 1889, at one-half minute past 9 o'clock a. m., said day—to locate with Valentine scrip No. E–270—the S. W. ¼ N. E. ¼ sec. 30, t'p 63 N., R. 11 W., which rejection is on the ground of prior entry, viz: F. H. E. reg. and rec. No. 1420, Feb'y 23d, 1887—Thomas Reed, for the same with other land. Said rejection is endorsed on said Wheeler's said application. The application under which said entry of Thomas Reed was made was filed at the hour of nine o'clock a. m. of said day by Emil Hartman, his attorney-in-fact.

The affidavits referred to in said appeal are transmitted this day with the appeal of said Wheeler from the rejection of his application to make Porterfield scrip entry for the N. W. ¼ S. E. ¼ said sec.

30, which said application was filed at the same time as his application the subject of this appeal, and was rejected for the same reason, viz., prior entry with Porterfield scrip by Emil Hartman.

As the facts in both said Porterfield scrip entry of said Hartman and in said F. H. E. of said Reed—and in both the said applications of said Wheeler are the same—and as in the appeal by said Wheeler from the rejection of his said application to enter said N. W. ¼ S. E. ¼ said sec. 30, we have made a full statement, accompanied with and corroborated by numerous affidavits, etc., showing the grounds of our action therein equally applicable to this case—we refer to our said statement—in lieu of any further statement by us in this case for the consideration of the Hon. Commissioner in passing upon this appeal.

Very respectfully, W. COLVILL, *Register.*

Hon. Commissioner General Land Office, Washington, D. C.

Indorsed on back :

General Land Office.

49351.

Apr. 23, 1889. Received. Filed with 20818–91. R. B. 29. Register, Duluth, Minn. McM. S. W. N. E., sec. 30. Patented April 13th, 1889.

Appearance of J. K. Redington May 28, 1889. 1889-64699–64682. A. M. K. C. G. T.

Transmits appeal of Charles P. Wheeler from the rejection of application to make Valentine scrip entry S. W. 4 N. E. 4, sec. 30, t'p 63 N., R. 11 W., for conflict with F. A. E. Reg. and rec. No. 1420. Feb'y 23d, 1889. Thomas Reed.

McG.

74 15 18–469

No. C. H. 2-20 ..... Referred to Div. "X"

Feb'y 26, 1891.

A. M. H. C. G. T.

Filed Sep't 12, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

EXHIBIT 5.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 22, 1892.

I, Wm. M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of Registsr Collville's letter dated Duluth, Minnesota, April 13, 1889, together with two enclosures, viz., appeal of Warren Wing by his attorney-in-fact, Chas. P. Wheeler, and certificate of right to make soldiers' additional homestead with accompanying papers appertaining thereto, are true and literal exemplifications from the files and records in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

U. S. G. L. O. Seal.

W. M. STONE,
Acting Commissioner of the General Land Office.
M. E. N. H.

M. L. 19903 & 1881 11250.

(4–208—.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb.* 19, 1881.

In accordance with official circular issued from this office, dated May 17, 1877, I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that Warren Wing, who made original homestead entry No. 459, at Ionia, Michigan, dated June 8, 1863, containing 123.50 acres, is entitled to an additional homestead entry of not exceeding thirty-six and $\frac{50}{100}$ acres, as provided in section 2306, Revised Statutes of the United States.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

J. A. WILLIAMSON,
Commissioner of General Land Office.

75 *Power of Attorney to Locate.*

From L. C. Black, attorney-at-law, Cincinnati, O.

Know all men by these presents that I, Warren Wing, of the county of Isabella, State of Michigan, do hereby make, constitute and appoint Charles P. Wheeler my true and lawful attorney, giving to my said attorney full power for me and in my name, place and stead, to locate at any land office in the United States, any land that I may be entitled to enter under the provisions of section 2306 of the Revised Statutes of the United States, under which I am entitled to enter 36 and $\frac{50}{100}$ acres in addition to my 123$\frac{50}{100}$ acres of homestead.

And I further authorize and empower my said attorney to receive the duplicate certificate of such entry and to demand, receive and receipt for the patent that may be issued by the United States Government for said land.

Granting and giving my said attorney full power to appoint a substitute, and hereby ratifying and confirming each and every act which my said attorney or his substitute may do or cause to be done in the premises by virtue of these presents.

[SEAL.] In witness whereof, I have hereunto set my hand and seal this 28th day of January, A. D. 1881.

WARREN WING.

Signed, sealed and delivered in presence of two witnesses—

C. BENNETT.
D. SCOTT PARTRIDGE.

STATE OF MICHIGAN, }
County of Isabella, } ss:

On this 28th day of January, A. D. 1881, before me the undersigned, clerk of Isabella county and of the circuit court thereof, personally appeared Warren Wing, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

[SEAL.] In witness whereof, I have hereuoto set my hand and affixed my official seal the day and year first above written.

L. C. GRIFFITH,
Clerk of Isabella County and Clerk of the Circuit Court.

These papers should be executed before an officer having an official seal. If before a justice of the peace, then his official character should be certified under the seal of a court of record.

76 Know all men by these presents, that I, —— ——, by virtue of the power and authority to me given, in and by the within letter of attorney of —— ——, of ——, do make, substitute and appoint —— ——, of ——, as well for me as the true and lawful attorney and substitute of the said constituent named in the said letter of attorney, to do, execute, and perform all and everything requisite and necessary to be done, as fully and to all intents and purposes, as the said constituent or I could do if personally present; hereby ratify and confirming all that the said attorney and substitute hereby made shall lawfully do in the premises — virtue hereof of said letter of attorney.

In witness whereof, I have hereunto set my hand and seal, the — day of ——, A. D. 187–.

WARREN WING. [SEAL.]

Signed, sealed and delivered in presence of two witnesses.

—— ——.
—— ——.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 17, 1877.

Registers and receivers U. S. land office.

GENTLEMEN: The honorable Secretary of the Interior, under date of 10th March, 1877, authorizes the modification of the circular in-

structions of 22d May, 1876, respecting soldiers' additional homesteads, his decision being as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *March* 10, 1877.

I have considered your report of the 17th ultimo, in relation to soldiers' additional homesteads entries, and in view of the facts therein stated I have determined to modify my decision of May 17, 1876, so as to permit entries to be made in the following cases, viz:

1st. Those presented prior to the order of March 20, 1876, suspending all entries of this kind, and rejected for reasons insufficient in law to bar their reception, but kept alive by appeal, which by such rejection were postponed bey-nd the date of the order and so lost.

2d. Those actually in the hands of agents or attorneys at the date of the promulgation of your instructions of May 22d last, in execution of my decision of the 17th of the same month, which under said instructions have not been recognized, and which will still remain in the hands of such agents or attorneys, and

77 3d. To allow entries to be made by the agents or attorneys of the party originally entitled to the entry, but only after the claim has been presented to you and certified as valid, and that the party is entitled to the amount of land claimed, under such instructions and regulations as you may prescribe.

I herewith return the papers accompanying your report.

Very respectfully, Z. CHANDLER, *Secretary.*

The Commissioner of the General Land Office.

Respecting the first of these classes, I have to advise you that they may be admitted without further formality when again presented at the district office after the settlement of the question upon which they were originally refused. The right of the applicant to make the entry will be fully inquired into by this office in adjudicating the claim, and proper action will be taken in its final disposition.

To secure the recognition of claims of the second class the papers held by agents or attorneys must be forwarded to this office in order that a critical examination of the same may be made, upon which, if found admissible, they will be returned to the proper parties duly certified as to their sufficiency, and may thereafter be accepted by register and receivers when presented for location.

If it shall appear that the party has already used his additional homestead privilege, or if from any other cause, the right cannot be admitted, the parties will be promptly advised of the facts in each case.

The third class embraces those rights yet remaining in the hands of the parties originally interested, which have never been presented for satisfaction or made the subject of transfer or agency. To secure these rights it is required that a full recital of military service be presented to this office, with due proof of the identity of the party

making the claim, and with proper reference to his original homestead entry, giving the name of the district office, date and number of entry, and description of the land. In addition, a detailed statement under oath must be filed by the party in interest, setting forth the facts respecting his right to make entry, and containing his declaration that he has not in any manner exercised his right, either by previous entry or application, or by sale, transfer or power of attorney, but that the same remains in him unimpaired. He must also declare, under oath, that he has made full compliance with the homestead law in the matter of residence upon, cultivation and improvement of his original homestead entry; and should further recite whether or not he has proved up his claim and received a patent of the land.

78 When these papers are filed and examined, they will, if found satisfactory, be returned with a certificate attached recognizing the right of the party to make additional entry under the law; and when presented with a proper application at any district land office, either by the party entitled or his agent or attorney, they will be accepted by the register and receiver, and forwarded with the entry papers to this office in the usual manner.

The fee for examination and certificate, under the seal of the office, will be one dollar, which must in all cases accompany the papers presented for approval.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

NOTE.—This affidavit must be acknowled-ed before one of the following officers, viz: A district land officer, a judge, or clerk of the court of the county in which the party resides. [SEAL.]

Additional homestead.

(Affidavit.)

LAND OFFICE AT ——, —— —, 18—.

I, Warren Wing of Isabella Co., Mich., having filed my application, No. —, for an additional entry under the provisions of section 2306 of the Revised Statutes of the United States, do solemnly swear that on the — day of ——, 18—, I made homestead entry of 123.50 acres of public land at the U. S. land office at Ionia, Michigan, per application No. 459; that I have faithfully complied with the requirements of the law in respect to said original homestead No. 459; that the same is now in good and regular standing upon the records of the land office at Ionia, Mich.; that I have never abandoned or relinquished an entry made under the provisions of the homestead laws; that this additional entry is made for my own exclusive benefit, and not directly or indirectly for the benefit or use of any other person or persons whomsoever; and further, that I have not made, nor agreed to make, any sale, transfer, pledge, or other disposition of my right to make the entry for which I now apply, or of the land which I apply to enter.

WARREN WING.

Sworn to and subscribed this 28th day of January, 1881, before me.

[SEAL.] L. C. GRIFFITH,
Clerk of the County of Isabella and the Circuit Court Thereof.

79 (4-087.)

Additional homestead.

Special Affidavit as to Military Service, Identity, etc.

LAND OFFICE AT ——, —— —, 18—.

I, Warren Wing, of Isabella Co., Mich., do solemnly swear that I am the identical person who was mustered into the military service of the United States under the name of Warren Wing, in Co. I, of the 16 reg't of V. R. C. volunteers, on the 22 day of February, A. D. 1864, and was honorably discharged from such service on the 25 day of July, A. D. 1865.

I further solemnly swear that I am the identical person who made original homestead entry No. 459 at Ionia, Michigan; that I now make application for an addition- homestead entry, having fully met all requirements of the homestead law as to said original entry; that I have not sold my additional homestead claim and that I have not made any prior application for an additional homestead certificate, except papers now on file at Washington.

My post-office address is Mt. Pleasant, Isabella Co., Mich.

WARREN WING, *Claimant.*

Two witnesses to signature:
C. BENNETT,
D. SCOTT PARTRIDGE,
Witnesses.

Sworn and subscribed to this 28th day of January, 1881, before
—— ——.
—— ——.

The undersigned do solemnly swear that we have been well acquainted with said Warren Wing, who made the above affidavit, for about 16 years, and that we have reason to know that his statements in said affidavit are true.

[SEAL.] C. BENNETT,
D. SCOTT PARTRIDGE,
Witnesses,
Two Carroborating Witnesses,

Sworn to and subscribed this 28th day of January, 1881.
L. C. GRIFFITH,
County Clerk, Clerk of Circuit Court.
L. C. BLACK,
Attorney-at-law, S. E. Cor. Fifth and Walnut Sts., Cincinnati, O.

80 UNITED STATES LAND OFFICE,
DULUTH, MINN., *Feb'y 23d*, 1889.

The application hereto attached of Warren Wing, by Charles P. Wheeler, his attorney-in-fact, to make additional homestead entry for lot 2, sec. 30, t'p 63 N., R. 11 W., under sec. 2306 Revised Statutes, filed this 23rd day of Feb'y, 1889, in this office, is rejected for conflict with prior final homestead entry under said section 2306 Revised Statutes, reg. & rec. number 1420, by Thomas Reed, made Feb'y 23d, 1889, for same with other land by Emil Hartman, his attorney-in-fact.

Thirty days allowed for appeal.

W. COLVILLE, *Register*.

Fees tendered in full.

C. P. MAGINNIS, *Receiver*.

(4–020.)

Additional entry under section 2306 of the Revised Statutes of the United States.

Application.

No. —.

LAND OFFICE, DULUTH, MINN., *Feb'y* 23, 1889.

I, Warren Wing, of Isabella county, State of Michigan, being entitled to the benefits of section 2306 of the Revised Statutes of the United States, granting additional lands to soldiers and sailors who served in the war of the rebellion, do hereby apply to enter lot two, section thirty, town. sixty-three north, range eleven west, of the 4th principal meridian, Minn., as additional to my original homestead on the S. ½ of N. E. ¼ and N. E. ¼ of N. E. ¼ of section 2 in township 13 N. of range 5 W., which I entered —— —, 18—, per homestead No. 459. Final proof made at Ionia, Michigan, land office on — day of ——, 18—. No. —.

WARREN WING.

Copy of Soldiers' Discharge.

To all whom it may concern:

Know ye, that Warren Wing, a private of Captain John P. Short, Company "I," 16th regiment of vet. res. corps, who was enrolled on the twenty-second day of February, one thousand eight hundred and sixty-four, to serve three years or during the war, is hereby discharged from the service of the United States this twenty-fifth day of July, 1865, at Pittsburg, Pa., by reason of general orders No. 116, Washington, D. C. (No objection to his being re-enlisted is known to exist.)

81 Said private Warren Wing was born in Chutuqua in the State of New York, is twenty-one years of age, six feet 00

inches high, dark complexion, grey eyes, brown hair, and by occupation, when enrolled, a farmer.

Given at Pittsburg, Pa., this twenty-fifth day of July, 1865.

M. G. CUSHING,
1st Lieut. & Assistant Commissary of Muster, Mustering Office,
WM. A. MACNAULTY,
2d Lieut. Com'd'g Co. I, 16th Reg't, V. R. C.

MT. PLEASANT, MICH., *Jan'y 28th*, 1881.

I, clerk of Isabella county and of the circuit court thereof, do hereby certify that the foregoing copy of the discharge of Warren Wing has been carefully copied and compared, and is a correct copy of the original.

Witness my hand the day and year above written.

[SEAL.] L. C. GRIFFITH,
Clerk of Isabella Co. and the Circuit Court Thereof.

If the soldier has lost his discharge, he should fill out this blank from memory as well as he can, and swear to it, making the necessary changes in the form.

Oath and Proof of Identification.

From L. C. Black, attorney-at-law, Cincinnati, O.

STATE OF MICHIGAN, } *ss:*
County of Isabella, }

Personally came Warren Wing, who, being duly sworn according to law, doth depose and say: That his age is 37 years, that his occupation is farmer and that he resides in the county of Isabella, State of Michigan. That he is the identical Warren Wing who at Isabella county, in the State of Michigan, on or about the 22d day of February, A. D. 1864, enlisted in the military service of the United States as a private in Company I of the 16th regiment of V. R. C. volunteers, and who was honorably discharged from said service at Pittsburg, in the State of Pennsylvania, on or about the 25th day of July, A. D. 1865, by reason of —. That he here-
82 with files a certificate of his discharge. That he enlisted originally in Isabella county, Mich., in spring of 1864, in Co. "H," 8th Mich. Inf. volunteers, Capt. Dowell, and was in January or February, 1865, transferred to Co. I, 16th reg't, V. R. C.

He further swears that he is the identical Warren Wing who under the name of Warren Wing, on the -- day of ——, A. D. 18—, at the United States land office, at Ionia, Mich., made original homestead application No. 459 for the S. ½ N. E. ¼ & N. E. ¼ N. E. fr. ¼ of section 2, in township 13, north (Fremont) of range 5 W. containing 123.50 acres, and made satisfactory proof of his right of title thereto from the United States, at the land office at Ionia, Michigan, on or about the — day of ——, 18—, per final certificate No. —, upon which he has received a patent. That because of said original

homestead being of less area than one hundred and sixty acres, and by right of said military service, he makes this application for the benefits of the provisions of section 2306 of the Revised Statute- of the United States. And he further swears that he has not in any manner exercised his right to make an additional homestead entry under said section No. 2306, either by previous entry or application. That he has not made any sale or transfer of said right or given a power of attorney authorizing any person or persons to make such sale or transfer, but the same remains in him wholly and unimpaired.

His post-office address is Mt. Pleasant, in the county of Isabella and State of Michigan.

(Signature of applicant) WARREN WING.

Attest:
WILLIAM N. BROWN.
C. O. CURTIS.

Also personally appeared William N. Brown, aged 31 years, and by occupation a lawyer, and Chas. O. Curtis, aged 39 years, and by occupation a farmer & register of deeds, and who, being duly sworn according to law, do depose and say, each for himself; that they are residents of the county of Isabella, in the State of Michigan; that they well know the above-named Warren Wing, who, in their presence, signed the foregoing declaration; that they have been well and intimately acquainted with him for 8 and 10 years last past respectively, and know from personal knowledge that he is the identical Warren Wing who served in company I of the 16 regiment of V. R. C. volunteers, and made a homestead on, and proved title to, the S. ½ N. E. ¼ & N. E. ¼ N. E. fr. ¼ of section 2, in township Fremont 13, N. of range 5, W., in the county of Isabella, in the State of Michigan. They further say that they are not interested
83 in the premises and their post-office address is Mt. Pleasant, in the county of Isabella and State of Michigan.

Attest: WILLIAM N. BROWN.
C. O. CURTIS.

Sworn and subscribed to before me this the 11th day of February, A. D. 1881.

And I certify that the declarent and his witnesses are known to me; that they are respectable and entitled to credit in their statements; that the contents of the declaration and affidavit were read to them before execution, and that I am not interested in the premises.

[SEAL.] In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

L. C. GRIFFITH,
County Clerk Isabella County & Clerk of the Circuit Court Thereof.

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, D. C., *Sept.* 15, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 1st day of Apr., 1879, requesting a "statement of service" of Warren Wing.

The following information has been obtained from the files of this office, and is respectfully furnished in reply to your inquiry:

It appears from the rolls on file in this office that Warren Wing was enrolled on the 22d day of Feb., 1864, at Union, in Co. —, 8th regiment of Mich. volunteers, to serve 3 years, or during the war, and mustered into service as a r'c't on the 27th day of Feb., 1864, at Corunna, in Co. —, 8th regiment of Michigan volunteers, to serve three years, or during the war. On the muster-roll of Co. H of that regiment for the months of May and June, 1865, he is reported absent, wounded. He was wounded severely in action May 16, '64, location of wound not stated, and transferred to Co. "I," 16th V. R. C., Jan'y 23d, 1865; cause of transfer not stated. R'g't was in action at the battle of the Wilderness, May 6th, 1864.

84 Det. mustered-out roll of comp'y I, 16th reg't vet. res. corps, dated July 25, 1865, reports him mustered out that date per G. O. 116, A. G. O., June 17, 1865.

J. P. N.

I am, sir, very respectfully your obedient servant,

H. C. CORBIN,
Assistant Adjutant General.

The Com'r General Land Office, Washington, D. C.

9426—B.—80.

Indorsed on back: 1889. 49358–2.

Before the register and receiver of the United States land office at Duluth, Minnesota.

In the Matter of the Application of WARREN WING to locate, with soldiers' additional homestead scrip issued to said Warren Wing, the following-described lands, to wit: Lot two (2), section thirty (30), township sixty-three (63) north, of range eleven (11) west, — the fourth principal meridian of Minnesota, dated March 23d, 1889.

Appeal to the Commissioner of the General Land Office from the decision of the register and receiver, dated February 23rd, 1889, rejecting the said application.

To the register and receiver of the United States land office, Duluth, Minnesota:

Please take notice—

That the applicant, Warren Wing, by his attorney-in-fact, Charles P. Wheeler, will and does hereby appeal to the Commissioner of the

General Land Office from your decision of date February 23rd, 1889, rejecting his said application to locate the above-described premises, and files herewith his specifications of error.

CHAS. P. WHEELER,
Attorney-in-fact for said Wing.
W. N. DRAPER,
Att'y for Appellant.

Specifications of Errors.

1. By the decision of the honorable Secretary of the Interior, dated February 18th, 1889, and instructions thereunder by the Commissioner of the General Land Office, the said premises became and were, on the 23rd day of February, 1889, public lands of
85 the United States, subject to disposition under general laws. On that date and before any other applicant had appeared or offered to file, make application for or to appropriate said premises, the appellant herein tendered to the register and receiver his application to locate said premises with said soldiers' additional homestead scrip.

It was error not to have received said application and to have allowed an entry and issued a certificate of location under the same.

2. It was error to have admitted the application to locate said premises offered by one Thomas Reed, inasmuch as said Reed was not the first legal applicant to locate said lands, and because, if said Reed offered any legal application whatever, it was second in point of time to that of appellant, Warren Wing.

3. Under the law, the first legal applicant presenting himself to the register and receiver and tendering a legal application is entitled to an entry of public lands after the cancellation of a previously existing entry or claim thereupon or thereto. The appellant, Warren Wing, being such first legal applicant, was entitled to an entry of the same.

It was error not to so hold and decide, and so holding and deciding to admit such application of said Wing and to issue him a certificate of location.

4. I- order to constitute a legal application to enter lands under the laws of the United States there must not only be a tender of the scrip proposed to be located, but also a legal tender of the fees and commission to which the register and receiver are in law entitled. The said Thomas Reed at the time of his so-called application, made no such tender. His application was therefore illegal, and not entitled to recognition even in the absence of a prior legal application.

It was error not to so hold and decide, and so holding and deciding, to reject his application for the premises in controversy.

5. It was error not to admit the application of the appellant, Wing, and reject the application of the said Reed upon facts of which the register and receiver should have taken notice judicially, and which are established by the affidavits of Joseph H. Chandler, Charles P. Wheeler, David T. Adams, John M. Derby, W. C. Mc-

Comber, —— —— and W. N. Draper, filed herewith to accompany this and other appeals this day taken by Charles P. Wheeler and David Moyer, to which reference is hereby made.

6. The Secretary's decision above referred to, and instructions of the Commissioner issued thereunder, upon the receipt of the same by the register and receiver, operated in law to entirely extin-
86 guish all prior claims to the land. It, *eo instanti*, became subject to disposition under general laws.

The appellant, Wing, was the first legal applicant for the same. His application should have been allowed. A certificate of location should have been issued to him, and all other applications should have been rejected and denied.

7. The appellant therefore prays that instructions to the register and receiver be issued by the Commissioner, directing them to cancel the certificate of location issued to the said Reed, and further directing them to admit to record as of the date of his tender, the application of the appellant, Wing, to locate the said premises, and to issue to him as of that date a certificate of location.

CHARLES P. WHEELER,
Attorney-in-fact for said Wing.
W. N. DRAPER,
Attorney for Appellant.

Indorsed on back.

Appeal of Warren Wing to the Commissioner of the General Land Office. Lot 2, sec. 30–63–11.
Filed March 23d, 1889.

W. COLVILL, *Register.*
CHARLES P. WHEELER,
Attorney for Wing.
W. N. DRAPER, *Attorney.*

1889–49358–1.

UNITED STATES LAND OFFICE,
DULUTH, MINN., *April 12th*, 1889.

SIR: We have the honor herewith to transmit the appeal of Warren Wing by Charles P. Wheeler, his attorney-in-fact, filed in this office March 23d, 1889—from our rejection of his application filed Feb'y 23d, 1889, at one-half minute past 9 o'clock a. m. same day—to make additional H. E. under section 2306, R. S. for 2, sec. 30, t'p 63 N., range 11 W., which rejection is for conflict with prior entry, viz: Final homestead entry (under said section 2306, R. S.) reg. & rec. No. 1420—Thomas Reed by Emil Hartman his attorney-in-fact—Feb'y 23d, 1889—at 9 o'clock a. m. said day, for same with other lands.

The affidavits referred to in said appeal are transmitted this day with the appeal of said Charles P. Wheeler from the rejecting of his application to make Porterfield scrip entry for the N. W. ¼ S. E. ¼ said sec. 30—application filed at the same time, as the application

in this case and which said application was rejected for the same reason as the rejection in this case, viz: Prior entry with Porterfield scrip by Emil Hartman.

87 All the facts in both said Porterfield scrip entry of said Hartman and said final homestead entry of Reed and in the said application by said Wheeler as attorney-in-fact for said Wing and in said Wheeler and Porterfied scrip application are the same and as in the appeal by said Wheeler from the rejection of his said Porterfield scrip application, we have made a full statement, accompanied with and corroborated by numerous affidavits of other parties—showing the grounds of our action therein—equally applicable to this case—we refer to our said statement, in lieu of any further statement by us in this case for the consideration of the Hon. Commissioner in passing upon this appeal.

Very respectfully, W. COLVILL, *Register.*

Hon. Commissioner, General Land Office, Washington, D. C.

Indorsed on back: General Land Office.

General Land Office.
49358.
Received Apr. 23, 1889.
C. Hobbs,
Register,
Duluth, Minn.,
Apr. 13th, 1889.
Filed with
20818
1891.
Lot. 2, sec. 30 patented.
Appearance of J. K. Reddington.
May 28, 1889, Hobbs.
R. B, 30 A. M. H.

Transmits appeal of Warren Wing by Charles P. Wheeler, his attorney-in-fact, from rejection of his application to make additional H. E. (sec. 2306, R. S.) for lot 2, sec. 30, t'p 63 N., R. 11 W.

75 H 3 V. V 1 13 469

Referred to H. Feb. 26, 1891.

A. M. M.
C. G. T.

Filed Sept. 12, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer deputy.

88 EXHIBIT 6.

UNITED STATES LAND OFFICE,
DULUTH, MINN., *Sept 7th*, 1892.

I, Monroe Nichols, register of the United States land office at Duluth, Minnesota, do hereby certify that the annexed copy of the appli-

cation papers of William M. Stokes, pages 1 to 16, inclusive, is a true and literal exemplification of the original papers now on file in this office.

In testimony whereof, I have hereunto subscribed my name *and* the day and year first above written, at city of Duluth, Minnesota.

MONROE NICHOLS,
Register of U. S. Land Office, Duluth, Minnesota.

Power to Locate.

Know all men by these presents: that I, William M. Stokes, of the county of Nobles, State of Minnesota, do hereby make, constitute and appoint W. C. Hill, of Washington, D. C., my true and lawful attorney, giving to my said attorney full power for me and in my name, place and stead, to procure the certification of my additional homestead claim and receive the certificate, to select, make application for me and in my name, to sign said application and to locate at any land office in the United States any land that I may be entitled to enter under the provisions of section 2306 of the Revised Statutes of the United States, under which I am entitled to enter eighty acres in addition to my eighty acres of homestead.

And I further authorize and empower my said attorney to receive the duplicate certificate of such entry and to demand, receive and receipt for the patent that may be issued by the United States Government for said land.

Granting and giving my said attorney full power to appoint a substitute and hereby ratifying and confirming each and every act which my said attorney or his substitute may do or cause to be done in the premises by virtue of these presents.

[SEAL.] In witness whereof, I have hereunto set my hand and seal this seventeenth day of August, A. D. 1882.

WILLIAM M. STOKES.

Signed, sealed and delivered in presence of two witnesses—
MILTON P. MANN.
GEO. J. DAY.

89 STATE OF MINNESOTA, } *ss:*
County of Nobles, }

On this 17th day of August, A. D. 1882, before me, clerk of court, personally appeared William M. Stokes, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

[OFFICIAL SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

L. B. BENNETT,
Clerk of the District Court.

A true copy.
Attest: MONROE NICHOLS, *Register.*

Indorsed on back.

This blank is for the attorney to execute and must not be filled out or executed by the applicant.

Know all men by these presents, that I, W. C. Hill, by virtue of the power and authority to me given in and by the within letter of attorney, dated August 17th, 1882, of Wm. M. Stokes, of Nobles county, Minnesota, do make, substitute and appoint Samuel C. Brown of St. Louis county, Minnesota, as well for me as the true and lawful attorney and substitute of the said constituent named in said letter of attorney, to do, execute and perform all and everything requisite and necessary to be done as fully and to all intents and purposes as the said constituent of I could do if personally present, hereby ratifying and confirming all that the said attorney and substitute hereby made shall lawfully do in the premises by virtue hereof of said letter of attorney.

In witness whereof, I have hereunto set my hand and seal, the thirteenth day of October, A. D. 1882.

W. C. HILL. [SEAL.]

Signed, sealed and delivered in the presence of two witnesses:
D. O. CRANE.
JOHN T. ARMS.

DISTRICT OF COLUMBIA, *ss:*

I, John T. Arms, a notary public in and for said District, do hereby certify that W. C. Hill, party to the foregoing letter of attorney, bearing date the 13th day of October, A. D. 1882, personally appeared before me, in the county aforesaid, the said W. C. Hill being personally known to me to be the person who executed the said letter of attorney and acknowledged the same to be his act and deed.

90 Given under my hand and seal this thirteenth day of October, A. D. 1882.

[NOTARIAL SEAL.] JOHN T. ARMS,
Notary Public.

A true copy.
Attest: MONROE NICHOLS, *Register.*

1882–66817.

(4–208.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Sept.* 21*st*, 1882.

In accordance with official circular issued from this office, dated May 17, 1877, I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that William M. Stokes, who made original homestead entry No. 8901, at Jackson, Minnesota, dated June 3, 1873, containing eighty acres, is entitled to an additional

homestead entry of not exceeding eighty acres, as provided in section 2306, Revised Statutes of the United States.

N. C. McFARLAND,
Commissioner of General Land Office.

A true copy.
Attest: MONROE NICHOLS, *Register.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 17, 1877.

Registers and receivers U. S. land offices.

GENTLEMEN: The Honorable Secretary of the Interior, under date of 10th March, 1877, authorized the modification of the circular instructions of 22nd May, 1876, respecting soldiers' additional homestead—his decision being as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *March* 10, 1877.

SIR: I have considered your report of the 19th ultimo, in the relation to soldiers' additional homestead entries, and in view of the facts therein stated I have determined to modify my decision of May 17, 1876, so as to permit entries to be made in the following cases, viz:

1st. Those presented prior to the order of March 20, 1876, suspending all entries of this kind, and rejected for reasons insufficient in law to bar their reception, but kept alive by appeal, which
91 by such rejection were postponed beyond the date of the order and so lost.

2nd. Those actually in the hands of agents or attorneys at the date of the promulgation of your instruction- of May 22d last, in execution of my decision of the 17th of the same month, which under said instructions have not been recognized, and which will still remain in the hands of such agents of attorneys, and

3d. To allow entries to be made by the agents or attorneys of the party originally entitled to the entry, but only after the claim has been presented to you and certified as valid, and that the party is entitled to the amount of land claimed, under such instructions and regulations as you may prescribe.

I herewith return the papers accompanying your report.

Very respectfully, Z. CHANDLER, *Secretary.*

The Commissioner of the General Land Office.

Respecting the first of these classes, I have to advise you that they may be admitted without further formality when again presented at the district office after the settlement of the question upon which they were originally refused. The right of the applicant to make the entry will be fully inquired into by this office in adjudicating the claim, and proper action will be taken in its final disposition.

To secure the recognition of claims of the second class, the papers held by agents or attorneys, must be forwarded to this office in order that a critical examination of the same may be made, upon which, if found admissible, they will be returned to the proper parties duly certified as to their sufficiency, and may thereafter be accepted by registers and receivers when presented for location.

If it shall appear that the party has already used his additional homestead privilege, or if, from any other cause, the right cannot be admitted, the parties will be promptly advised of the facts in each case.

The third class embraces these rights yet remaining in the hands of the parties originally interested, which have never been presented for satisfaction or made the subject of transfer or agency. To secure these rights it is required that a full recital of military service be presented to this office, with due proof of the identity of the party making the claim, and with proper reference to his original homestead entry, giving the name of the district office, date and number of entry and description of the land. In addition a detailed statement, under oath, must be filed by the party in interest, setting forth the facts respecting his right to make the entry, and containing
92 his declaration that he has not in any manner exercised his right, either by previous entry or application, or by sale, transfer, or power of attorney, but that the same remains in him unimpaired. He must also declare under oath, that he has made full compliance with the homestead law in the matter of residence upon, cultivation and improvement of his original homestead entry; and should further recite whether or not he has proved up his claim and received a patent of the land.

When these papers are filed and examined, they will, if found satisfactory, be returned with a certificate attached recognizing the right of the party to make additional entry under the law; and when presented with a proper application at any district land office, either by the party entitled or his agent or attorney, they will be accepted by the register and receiver, and forwarded with the entry papers to this office in the usual manner.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

A true copy.
Attest: S. L. FRAZER, *Receiver.*

(4-020.)

Additional Entry under Section 2306 of the Revised Statutes of the United States.

(Should be signed only with two witnesses.)

Application.

No. —.

LAND OFFICE, DULUTH, MINN., *Feb'y 23rd*, 1889.

I, William M. Stokes, of Nobles county, State of Minnesota, being entitled to the benefits of section 2306 of the Revised Statutes of the United States granting additional lands to soldiers and sailors who served in the war of the rebellion, do hereby apply to enter the N. W. ¼ of the S. E. ¼ and S. W. ¼ of N. E. ¼ of section 30, twp. 63 north, of range 11 west, of the 4th principal M., as additional to my original homestead on the west half of the southeast quarter, sec. 8, twp. 102, range 39 west, which I entered June 3d, 1873, per homestead No. 8901, at U. S. land office, Jackson, Minn.

WILLIAM M. STOKES.

Witness-:
MILTON P. DUNN.
GEO. J. DAY.

A true copy.
Attest: MONROE NICHOLS.

Indorsed on back.

93 UNITED STATES LAND OFFICE,
DULUTH, MINN., *Feb'y 23d*, 1889.

The within application rejected for conflict with the prior entry, viz: military bounty land warrant entry, special act of Congress of April 11, 1860, issued to executors of Robert Potterfield, and warrant numbered 1, reg. and rec. No. 2, Feb'y 23d, 1889, for said N. W. ¼ S. E. ¼, sec. 30, Emil Hartman, and for conflict with prior entry, viz: final H. E., Thomas Reed, by Emil Hartman, attorney-in-fact, reg. and rec. No. 1420, Feb'y 23d, 1889, for said S. W. ¼ N. E. ¼, sec. 30, with other land.

Thirty days allowed for appeal.

W. COLVILL, *Register.*

Fees tendered in full.

C. P. MAGINNIS, *Receiver.*

Filed Feb'y 23d, 1889, at one minute past 9 o'clock a. m.

W. COLVILL, *Register.*

A true copy.
Attest: MONROE NICHOLS, *Register.*

(4–064.)

Additional homestead.

Affidavit.

LAND OFFICE AT ——, —— —, 188–.

I, William M. Stokes, of Worthington, Minnesota, having filed my application, No. —, for an additional entry under the provisions of section 2306 of the Revised Statutes of the United States, do solemnly swear that on the 3d day of June, 1873, I made a homestead entry of eighty acres of public land at the U. S. land office at Jackson, Minnesota, per application No. 8901; that I have faithfully complied with the requirements of the law in respect to said original homestead No. —; that the same is now in good and regular standing upon the records of the land office at Worthington, Minnesota; that I have never abandoned or relinquished an entry made under the provisions of the homestead laws; that this additional entry is made for my own exclusive benefit, and not directly or indirectly for the benefit or use of any other person or persons whomsoever; and further, that I have not made, nor agreed to make, any sale, transfer, pledge, or other disposition of my right to make the entry for which I now apply, or of the land which I apply to enter.

WILLIAM M. STOKES, *Claimant.*

Sworn to and subscribed this seventeenth day of August, 1882, before—

[SEAL.] L. B. BENNETT,
Clerk of Dist. Court, Nobles Co.

A true copy.
Attest: MONROE NICHOLS, *Register.*

94 (4–087.)

Additional homestead.

Special Affidavit as to Military Service, Identity, etc.

LAND OFFICE AT ——, —— —, 18–.

I, William M. Stokes, of Worthington, Minnesota, do solemnly swear that I am the identical person who was mustered into the military service of the United States under the name of William M. Stokes, in Co. K, Eighth reg't of Kentucky cav'l. volunteers, on the fifth (5th) day of August, 1862, and was honorably discharged from such service on the twenty-third (23d) day of September, 1863.

I furthermore solemnly swear that I am the identical person who made original homestead entry No. 8901 at Jackson, Minn.; that I now make application for an additional homestead entry, having fully met all the requirements of the homestead law as to said original entry; that I have not sold my additional homestead claim and that I have

not made any prior application for an additional homestead certificate.

My post-office address is Worthington, Nobles county, Minnesota.

WILLIAM M. STOKES, *Claimant.*

Two witnesses to signature:
MILTON P. MANN.
GEO. J. DAY.

Sworn and subscribed this 17th day of August, 1882, before—

L. B. BENNETT,
Clerk of the District Court.

The undersigned do solemnly swear that we have been well acquainted with said William M. Stokes, who made the above affidavit, for about six years, and that we have reason to know that his statements in said affidavit are true.

[SEAL.]

M. P. MANN,
GEO. J. DAY,
Two Corroborating Witnesses.

Sworn and subscribed this 17th day of August, 1882.

L. B. BENNETT,
Clerk of the District Court.

A true copy.
Attest: MONROE NICHOLS, *Register.*

95 To all whom it may concern:

Know ye, that William M. Stokes, a corporal of Captain James H. Hudspeth company K, Eighth regiment of Kentucky cav'l. volunteers, who was enrolled on the fifth day of August, one thousand eight hundred and sixty-two, to serve one year or during the war, is hereby discharged from the service of the United States this twenty-third day of September, 1863, at Russellville, Ky., by reason of his term of service having expired.

(No objection to his being re-enlisted is known to exist.)

Said William M. Stokes was born in Warren county, in the State of Kentucky, is 23 years of age, six feet — inches high, dark complexion, grey eyes, dark hair, and by occupation when enrolled, a farmer.

Paid in full.

MALCOMB McDOWD,
Paymaster.

Given at Russellville, Ky., this twenty-third day of September, 1863.

J. H. HUDSPETH,
Capt. 8th Ky. Cavalry, Com'd O.
CHARLES H. FLETCHER,
1st Lieut. U. S. Infantry, Mustering Officer.

WORTHINGTON, 8, 17, 1882.

I, L. B. Bennett, do hereby certify that the foregoing copy of the discharge of William M. Stokes has been carefully copied and compared, and is a correct copy of the original.

L. B. BENNETT,
Clerk of the District Court.

Witness my hand the day and year above written.
[OFFICIAL SEAL.] —— ——.

A true copy.
Attest: MONROE NICHOLS, *Register.*

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, D. C., *Sept.* 11, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 29th day of August, 1882, requesting a "statement of service" of William M. Stokes.

The following information has been obtained from the files of this office, and is respectfully furnished in reply to your inquiry:

96 It appears from the rolls on file in this office that William M. Stokes was enrolled on the 5th day of Aug., 1862, at Russellville, Ky., in Co. K, 8th regiment of Ky. cavalry volunteers, to serve one year, or during the war, and mustered into service as a corporal on the 6th day of September, 1862, at Russellville, Ky., in Co. K, 8th regiment of Ky. cav'y volunteers, to serve one year, or during the war. On the muster-out roll of Co. K of that regiment, dated Russellville, Ky., Sept. 23, 1863, he is reported mustered out as a corporal, with company.

I am, sir, very respectfully your obedient servant,

C. McKEVER,
Assistant Adjutant General,
By G. M. WALDEN.

To the Commissioner of General Land Office, Washington, D. C.

H. C. P.

A true copy.
Attest: MONROE NICHOLS, *Register.*

Indorsed on back:
Department of the Interior & R. R. div. Filed Feb. 11, 1887. 1295.

Before General Land Office, Washington, D. C., and United States land office, Duluth, Minnesota.

In the matter of the application of William M. Stokes to enter, under section 2306, Revised Statutes of the United States, the N. W. ¼ of S. E. ¼ and S. W. ¼ of N. E. ¼ of section 30, t'p 63 N., of range 11 west, of the 4th P. M., dated Feb'y 23d, 1889, filed in the U. S. land office at Duluth, Minn., at 9 o'clock a. m., and rejected by the register of the U. S. land office at Duluth, Minn., Feb'y 23, 1889.

Notice of Appeal.

Take notice that William M. Stokes, by Samuel C. Brown, his attorney-in-fact, hereby appeals to the Commissioner of the Gen. Land Office, from the decision of the register of the U. S. land office at Duluth, Minn., wherein said register rejected the application of this appellant. This appellant bases his appeal upon the following specifications of error.

Very respectfully,

WILLIAM M. STOKES,
By SAMUEL C. BROWN,
His Attorney-in-fact.

To the Hon. Commissioner of the General Land Office, Washington, D. C.

97 *Specifications of Error.*

1st. The hon. register erred in rejecting this application "because of conflict with prior entry, viz: Military bounty land warranty entry, special act of Congress Apr. 11, 1860, issued to the executors of Robert Po-terfield and warrant No. 1, and reg. and rec. No. 2, Feb'y 23, 1889, for said N. W. ¼ of S. E. ¼, section 30, by Emil Hartman; also because of conflict, viz., H. E. of Thomas Reed by Emil Hartman, attorney-in-fact, reg. and rec. No. 1420, Feb'y 23, 1889, for said S. W. ¼, of N. E. ¼, of sec. 30," for the reason that said entries or applications to enter mentioned in said rejection were made simultaneous with those applications, if not after those applications were duly made at the U. S. land office at Duluth, Minn.

2nd. The register erred in holding that the entries mentioned in the above rejection were prior to the application of this appellant.

3d. The register erred in rejecting this application.

4th. The register erred in refusing to consider this application as simultaneous with the application for entries specified in the above rejection, and offering the right to enter to the highest bidder as required by the rules of the Land Department.

5th. The register erred in accepting any application for this land as prior to this application.

Before United States land office, Duluth, Minnesota.

Samuel C. Brown, being first duly sworn, deposes and says: That he appeared at that outer door of the U. S. land office at Duluth, Minn., on Feb'y 23, 1889, at or about the hour of 7 o'clock a. m.

That he remained at that outer door standing in the hall until the hour of 9 o'clock a. m., when the main entrance or outer door of the land office was opened. That at the time said door was opened, there had congregated in the hall at that door, a number of persons, to wit: about 20 or 25 persons, prepared to enter that door on its opening. That as soon as said door was opened there was a general rush to get into the land office to present papers or applications for land. That this dependent was the third person that passed through the door after its opening. That this dependent was there as the attorney-in-fact for William M. Stokes to apply for the N. W. ¼, of S. E. ¼, and S. W. ¼, of N. E. ¼, sec. 30, t'p 63 N. of range 11 W. of 4th P. M. under section 2306, Revised Statutes of the United
98 States. That this deponent also appeared at said time as the attorney-in-fact for Reuben E. Lawrence to apply for the S. E. ¼ of N. W. ¼, and lot 6 of sec. 30, t'p 63 N. of range 11 W. of 4th P. M.

That at that time, to wit, at 9 o'clock forenoon of the 23d day of *of* Feb'y, 1889, this deponent as said attorney-in-fact for said William M. Stokes and said Reuben E. Lawrence, was prepared with the applications duly made by said William M. Stokes and Reuben E. Lawrence for said above-described land, and prepared to pay the proper fees and commissions for said applications. That this deponent, together with a number of others, was prepared to apply for said land at the opening of the land office, placed his said application and the money for fees and commissions upon the counter as soon any other person who entered said land office at that time. That had said land office been opened prior to the hour of 9 o'clock, all applications thus made, without a doubt, would have been simultaneous.

This deponent further swears that all parties then and there ready to apply for the above-described lands, were all there and in readiness at the door of the land office at and before the hour of 9 o'clock a. m. That without a doubt, all applications for said land made on the opening of said land office on the 23d of Feb'y, 1889, were simultaneous. That there was not more than one-half a minute elapsed between the time that the first man entered that door until the last person, then and there ready to apply for said land, had entered the door of the land office and made application for this land.

That the cause of the delay of parties in getting into the land office on that morning was because of the rush and crowd that had to pass through the door before all applicants could get in.

This deponent further swears that at 9 o'clock or as soon as the door of the land office was opened on that morning, this deponent entered the same as soon as it was possible for him to get through and presented his application for said land and the money for fees and commissions to the officers of the land office. That as soon as it was found that others had applied at the same — he did, this deponent demanded of the officers of the local land office that they consider all applications simultaneous and receive bids for the privilege of entering said land. That demand was refused by the local land officers.

This deponent further swears that under all circumstances it was impossible to consider the applications then and there made as being other than simultaneous.

This deponent further swears that upon making said demand of the officers of the local land office, he offered to bid for the
99 privilege of entering said land, under the applications of Reuben E. Lawrence and William M. Stokes for whom this deponent appeared as attorney-in-fact, duly authorized by powers of attorney attached to said applications.

And further this deponent saith not.

SAMUEL C. BROWN.

Subscribed and sworn to before me this 6th day of March, A. D. 1889.

W. COLVILL, *Register.*

Before United States land office, Duluth, Minnesota.

James A. Boggs, being first duly sworn, deposes and says: That he is a resident of Duluth, St. Louis Co., Minn.; that on the morning of the 23d day of Feb'y, 1889, at or about the hour of 7 o'clock and 30 minutes a. m. of that day, this deponent appeared in the hallway of the Fargusson building, at the outer door of the U. S. land office at Duluth, Minn.; that he then and there found waiting in said hallway and at said outer door, Emil Hartman, Richard D. Mallett, comprising the firm of Hartman & Mallett, and one, John, whose last name is unknown to this deponent, who is book-keeper for the said firm of Hartman and Mallett, and also Samuel C. Brown; that at that time the above-mentioned four persons were the only ones at said outer door; that between that hour and the hour of 9 o'clock a. m. there had congregated at said outer door about 20 persons, some of whom were there prepared to make application for lands which were to be opened for entry on that morning; that this deponent was there to enter or apply for a part of said land, being the lands involved in the decision of the Secretary of the *the* Interior Feb'y 18, 1889; that at the hour of 9 o'clock the clerk of the land office opened the outer door of the land office from the outside; that as soon as the door was opened there was a general rush to get into the land office; that the first person through the door was Emil Hartman; that the second person was Warren N. Draper and that the third person was Samuel C. Brown; that at this juncture the door became blocked by the general rush, and as soon as that blockade was broken a few more entered the door and then the door again became blocked; that as soon as this blockade was broken the balance of the crowd then entered the room; that this deponent was one of the number desiring to enter the land office at the opening of the door; that he was prevented from getting into land office earlier by reason of the several blockades; that this deponent has had large experience in practice before the Land Department and the local land office, and this deponent swears that no more clear or perfect instance of simultaneous applications could be had than the

applications that were made on that morning at the opening of the land office.

100 This deponent further swears that all parties who made application for this land or any part of it, at the opening of the land office, were prepared to make said application and were ready at the door of said land office prior to the opening of the door.

This deponent further swears that the applications of all parties at that time were simultaneous, and that the right to *to* enter said land should have been offered at public auction and granted to the highest bidder then and there.

This deponent further swears that the room occupied as the local office for general business is a large room across which is placed a counter over which business is conducted; that from the space outside of the counter there is a door which leads into the hallway; that this is the door through which these applicants pass; that had said door been open prior to the hour of 9 o'clock, so that all parties could have entered the space of the enclosure inside of the room prepared to transact business over said counter, that all *applicants* would have been upon said counter and would have been strictly simultaneous.

This deponent further swears that all applications then and there made were presented to the receiver of the land office.

This deponent further swears that he believes that Emil Hartman was not the first person who presented an application for this land or any part thereof to the receiver on that morning.

This deponent further swears that applications made for said land upon the opening of the land office on the 23rd day of Feb'y, 1889, were simultaneous, and that the land applied for, or the rights to enter the same should have been offered at public auction and granted to the highest bidder.

And further this deponent saith not.

JAMES A. BOGGS.

Subscribed and sworn to before me this 6th day of March, A. D. 1889.

W. COLVILL, *Register.*

A true copy.
Attest: MONROE NICHOLS, *Register.*

Indorsed on back.

Stokes Exhibit "A."
" C."
U. S. land office, Duluth, Minnesota.
Wm. M. Stokes *vs.* Emil Hartman.
Appeal.
Filed M'ch 6th, 1889.
W. Colvill, register.
Samuel C. Brown, attorney-in-fact.
Stokes 1889–48787–1.

101 Filed Sept. 12, 1892. Oscar B. Hiliis, clerk, by A. L. Bloomer, deputy.

EXHIBIT 7.

(4–207.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 22, 1892.

I, Wm. M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter signed James K. Redington, attorney for Wheeler & Wing, dated Washington, D. C., May 29, 1889, relative to entry of Thomas Reed for S. W. ¼ N. E. ¼ and lots 1 and 2, sec. 30, township 63 N., range 11 W., Duluth, Minn., is a true and literal exemplification from the files and records of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

U. S. G. L. O. Seal.

WM. M. STONE,
Acting Commissioner of the General Land Office.

Dictated. WASHINGTON, D. C., *May 29th*, 1889.

Hon. S. M. Stockslager, Commissioner General Land Office, Washington, D. C.

SIR: In the matter of the entry of Thomas Reed, under section 2306 of the Revised Statutes, for S. W. ¼ N. E. ¼ and lots 1 and 2, section 30, t'p 63 N., R. 11 W., Duluth, Minn., forwarded with register and receiver's monthly returns for February, 1889, and at this date in division "M" of your office, I herewith enter my appearance against said entry and respectfully request that this appearance be filed with the entry papers in said case.

The above-mentioned entry is in conflict with the rejected application of Charles P. Wheeler to locate the S. W. ¼ N. E. ¼ of said section with Valentine scrip No. E-270, and the rejected application of Warren Wing to enter lot 2 of said section under section 2306 of the Revised Statutes, both of which applications are now pending on appeal in division "C," and this appearance against said Reed is intended as a caveat action upon his said entry pending the conflict above mentioned.

Very respectfully, JAMES K. REDINGTON,
Att'y for Wheeler and Wing.

102 Indorsed on back.

General Land Office, 65253, June 1, 1889. Received. Jas. K. Redington, city. May 29, '89. Appears against entry of Thomas Reed, Duluth.

Filed Sept. 12, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

EXHIBIT 8.

(4–207.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 22, 1892.

I, Wm. M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of letter 65761–1889, of Messrs. Curtiss & Burdette, dated at Washington, D. C., June 3, 1889, and addressed, "the Commissioner of the General Land Office," relative to certain lands in sec. 30, township 63 N., range 11 W., in Duluth, Minn., land district, is a true and literal exemplification from the files and records in this office.

U. S. G. L. O. Seal.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

W. M. STONE,
Acting Commissioner of the General Land Office.

WASHINGTON, D. C., *June* 3, 1889.

To Commissioner of the General Land Office.

SIR: There is pending before the Honorable Secretary of the Interior a motion by Orilie Stram, *née* Moreau, and Frank W. Eaton, attorney-in-fact, for the reconsideration and review of the decision of the department dated February 18, 1889, in the case of Thos. W. Hyde and Angus McDonald against said Stram and Eaton involving the location of Sioux half-breed scrip No. 19 D, on lots 3, 5, and 6, and the S. E. ¼ of the N. W. ¼ of section 30, township 63 N., range 11 W., and the location of Sioux half-breed scrip No. 19 E, on lots 1 and 2 and the S. W. ¼ of the N. E. ¼, and the N. W. ¼ of the S. E. ¼ of said section, township and range.

In view of the pendency of such motion and of the further fact that it has been set down by the Secretary for argument at an early day, we have the honor to request that you will give the necessary instructions that no action whatever be had by any division of your office looking to the disposal of any of said lands above referred to until the final action of the Secretary of the Interior on said motion for reconsideration and review shall be announced.

Very respectfully, CURTIS & BURDETT.

103 (Indorsed on back.)

General Land Office, 65761. Received Jan. 4, 1889. M. P. M.
This letter received and proper notes made on tract book Dec. 2, '89. Noted on the record of letters received as charged to H. War Dep't.

GEO. DEEHL.

June 3, '89, Curtis & Burdett, city, ask that no action be had in case of Hyde & McDonald *vs.* Stram & Eaton pending motion for reconsideration before the department. Suspend action as requested.

W. M. STONE,
Acting Commissioner.

Filed Sep't 12, 1892. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

EXHIBIT 9.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *August* 11, 1889.

Pursuant to section 382 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of an original letter of record in this department.

D. of the I. Seal. In testimony whereof, I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

GEO. CHANDLER,
Acting Secretary of the Interior Dep't.

(1–430.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *April* 17, 1889.

The Commissioner of the General Land Office.

SIR: I enclose herewith for your consideration, a communication dated the 13th instant, from Messrs. Charles and William B. King, relative to the case of Allen *et al. v.* Merrill *et al.* The case referred to, as also those of Hyde and McDonald *v.* Eaton *et al.*, and McGee *v.* Ortly, involving the validity of locations of Sioux half-breed scrip, are now pending before the department on motion for review; and I would suggest that the proper local officers be notified to suspend all proceedings in any matter growing out of said cases until said motions are disposed of.

Very respectfully, JOHN W. NOBLE, *Secretary.*
G. C.

104 Filed Sept. 12, 1892 Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

EXHIBIT "A."

UNITED STATES OF AMERICA, }
District of Minnesota, }

Circuit Court. In Equity.

UNITED STATES OF AMERICA
v.
THOMAS REED, GERMANIA IRON COMPANY, EMIL HARTMAN, and RICHMOND D. MALLETT.

In pursuance of the stipulation of the parties, except Thomas Reed, to the above-entitled action, the Secretary of the Interior makes the following statement in reference thereto:

That on the 13th and 15th days of March, 1889, motions for review of the decision of the Secretary of the Interior, filed February 18th, 1889, and referred to in the bill of complaint in the above action, involving claims of Fred. T. Huntress, Thomas W. Hyde, Angus McDonald, Frank W. Eaton and Orilie Stram, formerly Moreau, were filed in the office of the Commissioner of the General Land Office, and on the 29th of May, 1889, one James K. Reddington filed his written appearance and caveat in the office of the Commissioner of the General Land Office against the entry of Thomas Reed, involved in said suit, and that on June 3, 1889, Messrs. Curtis & Burdett, attorneys for Orilie Stram, *née* Moreau, and Frank W. Eaton, duly filed with the Commissioner of the General Land Office a notice of the pendency before the Secretary of the Interior of a motion by Orilie Stram, *née* Moreau, and Frank W. Eaton for reconsideration and review of the decision of the department dated February 28, 1889, in the case of Hyde & McDonald *v.* Stram (*née* Moreau) and Eaton, giving a description of the land involved in the above-entitled action and requesting the Commissioner to give the necessary instructions that no action should be had by any division of the land office looking to the disposal of any of the lands mentioned until the final action of the Secretary of the Interior on the motion for reconsideration and review; that this last-mentioned paper was filed in the office of the Commissioner of the General Land Office on June 4th and that on it an order was duly made by the acting Commissioner of the General Land Office suspending action as requested. That this for-going motion, notices, etc., are the same as appear in the documentary evidence of complainant. That at the time of the issuance of the patent described in the bill of complaint in the above-entitled action to Thomas Reed these motions for review and reconsideration, and the order suspending action, and all the actions and proceedings herein referred to were still pending in this department and has not been considered or acted upon by the department, and that it was not until long
105 after the issuance of the patent, viz., on April 7th, 1890, that these various motions and applications were passed upon by

me as Secretary of the Interior. That I had no knowledge whatever of the issuance of said patent at the time it was issued, and did not learn of it until after it had been, as I am informed, delivered and had passed from this office. The proceeding referred to involved the right of Thomas Reed to a patent for the following-described land on a soldiers' additional homestead entry, the S. W. ¼ of N. E. ¼ and lots 1 and 2 of sec. 30, t'p 63 N., R. 11 W., 4th P. M., Minnesota.

On June 14th, 1888, there had been made a rule by the Commissioner of the General Land Office amending rule 114 of rules of practice, as follows: "Motions for review before the Secretary of the Interior and applications under rules 83 and 84 shall be filed with the Commissioner of the General Land Office, who will thereupon suspend action under the decision sought to be reviewed and forward to the Secretary such motion or application; and this order of the Commissioner of the General Land Office was approved by the Secretary of the Interior June 14, 1888, and was in full force at the time of the transaction above mentioned.

The patent to Reed was issued in violation of this rule.

JOHN W. NOBLE.

Indorsed on back:

Men. rec'd from Hon. Secretary of the Interior thro' his private secretary, July 22, 1892. A. G. Hall, clerk div. H, Gen'l L. O.

EXHIBIT "D."

Testimony Before the Committee of the General Land Office in the Case of the Improper Issue of Patent 1420, *Duluth Land Office.*

Morning session.

WEDNESDAY, *December* 18, 1889.

WILLIAM B. DOUGLASS sworn and examined.

By Mr. JAMES G. JOHNSON:

Q. What is your name?

A. William B. Douglass.

Q. Mr. Douglass, will you please state what the facts are in regard to the matter which is the subject of this order we have just heard read, and order to examine into the issuing of patents to lands in the State of Minnesota?

106 The WITNESS: I have charge of the soldiers' additional homestead entries; it is my place to examine them for the purpose of approving for patent if proper. I took the case up in the regular established order which I have, the order that we have in those cases that each office is examined in alphabetical order; Duluth being well up in the alphabet and reached early. I examined that with a number of other cases and approved them for patent; before approving I examined the tract books for the purpose of seeing if there was anything against it, and in this connection I might say that it depends almost entirely on the tract books; the tract books showed nothing against the entry; it appears, how-

ever, that there was filed with the case an appearance by attorneys and that said appearance was in the nature of a protest being filed in division M and placed with the case.

The letter was not recorded, but sent here with the case; in examining the case I saw the appearance, but judged it only to be the usual appearance (rule), and noticed that there was no notation on the back of the case. I made the notation on the file and finding the case regular, as appeared from the tract book, upon which I relied, I approved the case for patent. I will state that it is customary, when a protest is filed against a case, to have the notation made on the tract book to that effect in pencil; but, as I stated, as the letter failed to come to me in the regular order, I never read it until after it was approved, and perhaps I am careless to that extent, of having not read it, but as I stated before, thinking it only to — a formal appearance of attorney, I thought it had no bearing on the case, so depended on the tract book. After the case was approved for patent, with some eight or ten other entries, they were fixed in a bunch and the usual slip placed on them; they were taken around to the Minnesota section and charged by their book-keeper to division B, but, owing to the press of business, they were left in division C, laying on the table; shortly after that time the case 1420 was called up by telegram; it appears that telegram was brought to the office by a small boy, who appeared to act in the capacity of an office boy, and the request was made for that case. I informed him that the case had been sent to division B; on investigation in division B, it was not on file and a card was sent up for the case; of course they failed to find the case and came to me with the card; I took the card——

Q. Who came to you with the card?

A. A messenger from division B; I found the case, took it out of the file and inserted the card, "Sent specially to 'B,'" not for the purpose of being anything irregular or special, but simply to account for the missing of the case from the package when it should be found. After that I know nothing further in regard to the case. That was the last action I took in the matter.

107 By Mr. REDINGTON:

Q. Mr. Douglass, what did I understand you to mean when you say that my letter entering an appearance in the case by way of caveat was not filed in the regular way?

A. Well, I do not say that it was not on file in the regular way. I said it did not reach me in the regular way.

Q. What do you mean by that?

A. I mean that it is customary, and I think required, when a case is transferred from one division to another that the letter shall be referred and go through the mail-room so that a record of the letter shall be kept. Then from the clerk having charge of the mail book the recorder of division C charged it to the proper section in that division.

Q. At the time I filed this letter did you know where the application papers were?

A. The application papers, I think, were in division M at that time.

Q. In division M?

A. Yes.

Q. Do you know where this letter was filed—what part of the office?

A. Now, as to what you tell me—you told me you had them sent up to division M. They came up with the case.

Q. Do you know nothing from an inspection of the paper itself on that subject?

A. I don't remember.

Q. Don't the remarks upon the paper show that it was filed in the registering-room in the regular order?

A. Yes, sir; I presume it was filed in the registering-room and it went, I presume, to division M.

Q. Do not the notations upon the paper, as well as the records of the registering-room, show that it was regularly sent to division M, where the papers were? Look at the papers and tell me.

A. I cannot say as to that.

Q. If that is so, what would have been the duty of the clerk in division M who received that paper, in respect to it?

A. It would have been his duty in sending the case to the division, to have it initiated by the chief and then sent to the registering-room and then sent to division C.

Q. While the papers still remained in M?

A. No, sir; after the papers were sent to division C.

Q. You have already stated that the notes upon that paper show that it was regular, where the papers then were?

A. Yes, sir.

Q. Now if that is true was it not the duty of the clerk of division M to put the papers with the case?

A. At that time I presume so; yes, sir.

Q. Now is that what he did?

A. I cannot say.

108 Q. When the files in the case reached your division you found the letter with it?

A. I found the letter there.

Q. That is all you mean by saying that the paper was not filed in the regular way?

A. Yes, sir; what I meant was in regard to going from division M to division C.

Q. When you approved that case for patent on the 11th day of November, did you notify any attorney as to the approval?

A. My impression is that I did.

Q. Who did you notify?

A. My impression is, that I notified you.

Q. Did you notify anybody else?

A. I have no recollection of any notice except having sent a notice to you.

Q. Did you know whether there was an appearance of any other attorney in the case at that time?

A. I do not remember at present.

Q. Did you know whether or not Mr. Harrison had an appearance in the case at the same time?

A. I cannot say; the endorsement on the papers should show.

Q. Why is it that you recollect sending a notice to me and do not recollect anything about sending a notice to Mr. Harrison, who had an appearance in the same case?

A. As to that part I could not say; as I stated, I do not remember that it was in this case that you received the notice; I remember positively of having sent you a notice in some case.

Q. Have you any impression as to sending Mr. Harrison such a notice?

A. I have no impression.

Q. Have you any recollection, I asked?

A. I have no recollection.

Q. You say that you have an impression as to such a notice having been given me?

A. Yes, sir; in regard to you.

Q. Can you tell me why it is you have an impression of having sent me such a notice and have no impression in respect to Mr. Harrison?

A. I could not tell you; no, sir.

Q. Did you ever read this letter of mine?

A. I did, after approval of the case.

Q. When did you read it?

A. It was on the 30th of November.

—. Did you ever read the indorsement upon it?

A. I presume that I did not read it correctly, from my notation on the case.

Q. Well, did you ever read it at all?

A. Yes, sir; I did; because I made a notation on the outside of the case.

109 Q. What notation did you make on the outside of the case after reading it?

A. Appearance of Mr. Redington, giving the letter number; that is the only reason I know the paper was in the case when I examined it.

Q. Prior to making that note on the entry paper did you make any other notes?

A. No, sir.

Q. Look at the paper and tell me if you did not make another one before making that?

A. As to appearance, yes, sir; that is my writing.

Q. What is it?

A. Appearance of L. Harrison, 74309, 1889.

Q. Then you indorsed Mr. Harrison's appearance on the paper before you indorsed mine?

A. Yes, sir; I did.

Q. And that you assumed that both of us were appearing for the entry?

A. Yes, sir.

Q. You supposed?
A. Yes, sir.
Q. And that I was appearing for it as well as Mr. Harrison?
—. Yes, sir.
Q. And which you say you read?
A. Yes, sir.
Q. If I unnderstand you correctly, Mr. Douglass, you answered one of the Commissioner to the fact that even if you had read the indorsement and then had gone to the tract book and found no subsisting conflict, nevertheless you would have approved that case for patent?
A. I said I should have gone to the tract book and verified the statements in the letter, but I would never have passed the case without some explanation as to the statement in that letter, even though the tract book had not shown it.
Q. Did you not upon your direct examination state in substance that you read the indorsements upon Mr. Redington's letter, but did not observe that it was an appearance against the case?
A. Yes, sir; of course I had reference simply to a formal appearance against the case.
Q. Now, Mr. Douglass, if you had found an appearance against the case, would it not have been your duty not only to examine the tract book, to put fully every indication given by that letter, in order to ascertain whether there was a conflict or not?
A. It certainly would.
Q. But will you look at my letter and see if you had read that letter if you would not have discovered a conflict?
A. This would have shown me that the probabilities were there was something wrong in the case, although the tract book
110 did not show it. Had I read this letter I would not have approved the case for patent and without thoroughly examining and without talking with the attorneys about it.
Q. Does the letter itself state what the exact conflicts were as to each forty-acre tract and the divisions where they were to be found?
A. It sets out the conflicts; I have never examined since I read the appearance to see if the tract book shows anything of reference to it.
Q. Does it not show, that is, the letter, the division in which these confl-cts were confined?
A. Yes, sir; it shows in division C, so stated in the letter.
Q. That if you had looked at my letter you would have had full information on the subject?
A. I would have had information, yes, sir; but whether fully or not——
Q. How was this letter endorsed?
A. Appearance against the entry, I believe.
Q. When you examined this series of Duluth cases, what office had you finished before that?
A. Devil's Lake or Dardanelle.
Q. Was it the one immediately preceding Duluth?
A. One immediately preceding Duluth.

Q. Upon what office are you working now?

A. Right after examining Duluth I went off on leave and have not examined any since I came back, but I completed the Duluth office with the exception of one or two entries which are still to be written up. But all cases that were ready for approval for patent in Duluth were approved.

Q. About the time you examined this Reed entry do you remember examining another entry, by the name of Moyer?

A. No, sir; I cannot recall the matter.

Q. See if about the same time you examined the case (final certificate 1421)?

A. That was approved November 8th. I do not remember just the date of the approval of the measure. About the same time it appears to have been approved on the same day with the other.

Q. Who was the attorney in this case?

A. I cannot say.

Q. Have you any recollection as to who was the attorney after looking at that paper?

A. In that case? No, sir; none whatever.

Q. Have you any recollection of the case?

A. I cannot say what I have; no, sir.

Q. Final certificate No. 1421?

A. That is the number of the case.

Q. In examining these cases for patent is it your practice to approve the soldiers' additional claim of non-contiguous tracts?

111 A. That would depend entirely upon the date of the entry and lot entry.

Q. If it was an entry made as late as Feb. 23, 1889, what was the rule?

A. The practice would be not to approve a non-contiguous——

Q. Now, will you look at that case and tell me whether or not the lands you there approved for patent are contiguous or non-contiguous?

A. I could not tell by looking at the papers. Lots 3 and 4, I mean 3 and 5. It would owe entirely to the position of the lots, unless I have a diagram.

(Diagram sent for.)

Q. After looking at these papers, tell me who was the attorney in that case? Who appeared for the entry?

A. The attorneys as appearing in these cases were L. Harrison and J. K. Redington.

Q. This is the case of David Moyer. Now, look through the papers and see who appeared for David Moyer?

A. Luther Harrison, I presume.

Q. Who appeared as attorneys for Thomas Reed in 1420?

A. Mr. Harrison appeared as the attorney in part of the case—part of the entry.

Q. Anybody else?

A. From this Mr. Harrison appeared.

Q. Look through the papers and see.

A. I see no notation about that.

Q. Mr. Seymour and Harrison (exhibiting plat of 63 north, 11 west, Minn.).

A. This appearance of Mr. Harrison is also signed by Seymour and Harrison; there is no other appearance on this paper.

Q. Looking now at the papers in the entry of David Moyer, No. 1421, look at the tracts which you approved for patent and tell me whether they are contiguous or non-contiguous.

A. 3 and 5 are non-contiguous.

Q. These are the two that you approved for patent?

A. Yes, sir; they touch at the corners, but not in the way required.

Q. Those two tracts corner, do they not?

A. They corner; yes, sir.

Q. Now, give me the description of the tract that lies in the corner as you describe it, the S. E. corner of the square described by those two forties.

A. The S. E. corner?

Q. Yes.

A. The S. E. corner would be lot 6; lot No. 6—that is, the quarter, the S. E. of the S. E., or rather the S. E. of the N. W. quarter would be regular quarter section of the forty acres. That is what you have reference to.

Q. Have you given me now the description of the forty acres that lie immediately contiguous to the two non-contiguous forties that you approved on the southeast?

112 A. That is described as lot 6; it would be contiguous to both lots 3 and 5.

Q. Now, do you know what, if any, claim was pending for lot 6 at the time thet you approved those other two forties to patent?

A. I do not, sir.

Q. Do you know that original Moyer claim included those three forties and the forty which was excluded from the entry and from your approval for patent was the tract claimed by Mr. Mellett and Hartman adverse to Moyer?

A. No, sir; I do not.

Q. Do you know that to be a fact?

A. No, sir.

Q. What, if any, application was made to you by anybody for action in that Moyer case?

A. As being called up, I do not remember of any.

Q. Did I ever call it up?

A. I could not say.

Q. Have you any recollection that I did?

A. No, sir.

Q. Nor any impression on that subject?

A. No, sir; it is such a common thing for attorneys to call up the matter, I have no recollection.

Q. Now, when you approved that claim for patent, did you give anybody any notice of it?

A. I presume not; I see no indorsement of appearance on the case.

Q. You have no recollection nor impression on that subject?

A. No, sir.

Q. You don't know whether you gave the notice to either myself or Mr. Harrison?

A. Well, I might if you had an appearance in this case.

Q. Look at the case and see who did appear there as attorneys?

A. I fail to see any appearance.

Q. Is there no appearance there, nor no notice of any appearance?

A. No note of any appearance; no, sir.

Q. This paper which I now hand you was a letter written to the Commissioner in your handwriting. Is this letter a correct statement of the facts in the case?

A. Yes, sir.

Q. In this letter, you say, with reference to my appearance, it was briefed as a simple appearance?

A. Yes, sir.

Q. Now, is that the fact?

A. It is, sir, to the best of my recollection.

Q. Is it not a fact that it is briefed as an appearance against the entry?

A. Yes, sir.

113 Q. You think that a letter briefed as against an entry is a simple appearance?

A. It is.

Q. That is what you mean here?

A. Certainly it is.

Q. And you think it was briefed as a simple appearance in the entry?

A. Nevertheless it is a simple appearance.

Q. Further on you say that the required notation had not been made?

A. I think so; yes, sir.

Q. What do you mean by that?

A. That is what I had referred to. I want to make a distinction there between an appearance and a protest against an entry. The paper is, in my opinion, a protest against the issue of the patent.

Q. Do you know whether any such notation is required in division "M"?

A. I do not, sir.

Q. Then you don't know whether it is required in any office before it reaches your division?

A. Yes, sir; I mean the notation that is required in division "C"; I don't know whether it is in other divisions or not. I cannot say as to that.

Q. Do you know that it is required anywhere before it reached your division?

A. No, sir.

Q. What is required any place before it reached your division?

A. I could not say.
Q. When it reached your division, whose duty was it to enter it?
A. If there was an appearance, it was my business to note it.
Q. You did note it?
A. I did note it; yes, sir.
Q. You did note it, you say?
A. I did note it; yes, sir.
Q. When did you note it?
A. On that case? Well, I could not state. In all probability when I took the case up for examination, I noted the appearance.
Q. You noted it as an appearance in favor of the entry?
A. Had I noticed that it was an appearance against the case, I would have probably so noted it on the case.
Q. I am not asking you what you would have done; I am asking you what you did?
A. I noted it simply as an appearance for the case.
114 Q. Now, was that done when the case first reached your desk?
A. No, sir; I presume not.
Q. When was it done?
A. When I took it up for examination.
Q. And not until then?
A. Of course I am making this statement on merely a supposition of this theory, that the papers, when the paper come to my desk, the appearance being filed with the papers, my attention not being called to it at all, I went to examine the case. Then noticed that there was no notation on the back of the papers as required. I took it then and made the notation.
Q. Was it at the time you made the examination?
A. I presume that it was.
Q. Well, have you any recollection?
A. No recollection on the subject whatever.
Q. Suppose you had found that case marked, "No conflict," would you, in regular course of your business, have gone to the tract books at all?
A. If the endorsement was my own "No conflict," I would not have gone. If the endorsement was any one else's, I would have gone.
Q. I do not know that I understand you. How came you to know that there was no conflict until you did look at the tract books?
A. Well, I would not have known until I looked. But when I take a case up, I examine the tract book, and after examining it I very often note on it "No conflict," and then take the case up for examination.
Q. You take several cases with you?
A. Yes, take several cases from the tract book.
Q. You make that before you examine the tract book?
A. Certainly, never before, and I do not really * * * any other notations. There are several old cases that are marked "No conflict," but I always examine the tract book.

Q. Suppose you had read my letter, would you have made an endorsement on the back of this case "No conflict"?

A. I have read your letter. I would have made an endorsement on the case of a protest; that is, I would have made such an endorsement that would have called my attention to the fact that there was a protest against the case. I would certainly not have made the endorsement that I did.

Q. You would have?

A. Of course, I simply examined the papers and the tract book in my — that is what I depend on, for instance, I examine first the tract books as to the original entry. I look there to see if there is any notification of the party ever having exercised his right, then to see if there is any record of the entry itself. I examine
115 that so to see if there is any conflict or * * * referred to certain letters, see certain letters, in case of a protest or objection to the case.

Q. Further on in this letter you say, "I necessarily depend almost entirely on the tract books." Q. Is that a fact without examining the other papers in the case?

A. That is what I mean, that I depend on the tract books.

Q. Now, Mr. Douglass, in examining the tract book of 30, T. 63, 11, would you have discovered anything about the original entry?

A. 30 63 11, that is in Duluth. I examined two tract books. I examined the tract book containing the additional entry of every soldier. That is the first tract book, then I examined the second where the additional entry is made.

Q. You make an examination of the original entry first?

A. Well, I do not know. I make an examination of both tract books. I do not know whether I have any special order to examine one before the other.

Q. Now, Mr. Douglass, with a package of papers in your hand containing a written protest, conditioned against a case and entry, do you mean to tell me, the tract book would be your main dependance?

A. I do, sir. Yes, sir.

Q. You mean to say that under such circumstances that the tract books would be your guide?

A. I mean to say that the tract book would be the first place I would look for the verification; not finding — there, I would have made other investigations, following the directions pointed out by the papers.

Q. What attorney, if any, ever called up that case of Thomas Reed, while it was on your desk?

A. I could not say.

Q. Did any one?

A. I could not say that they did.

Q. What do you mean by saying you cannot say?

A. Well, I mean that it might have been called up and I would have had no recollection.

Q. You mean to say that you would have no recollection of any one calling it up?

A. Yes, sir; that is what I mean.

Q. What is your first recollection connected with that case, after you had approved it for patent?

A. Well, my first recollection in regard to the case was a small boy coming around there with a telegram in his hand inquiring about the case.

Q. Would you know that telegram if you should see it?

A. Well, it was a telegram similar——

Q. I mean would you know that telegram if you should see it?

A. No, I could not positively, I did not read the telegram.

116 Q. Who do you say brought that telegram to you?

A. A small boy.

Q. Do you know what boy?

A. No, sir, I do not.

Q. Would you know him if you would see him?

A. I probably—I think I would know him.

Q. Have you ever learned who he was?

A. No. I have heard statements. Some one said that it was Mr. Harrison's boy.

Q. Have you ever heard Mr. Harrison make any statements about it, or Mr. Seymour, or Mr. Mallett?

A. No, sir; I have never.

Q. Have you ever talked with either of those three gentlemen about the issuance of the patent?

A. No, sir.

Q. Now, have you ever had any conversation with either of those three gentlemen on that subject since the issuance of the patent? (Asks if he knows certain lawyers sitting there.)

A. I think not, no, sir; I believe not. There is—I mean, certain order. I would recognize the order, I would know the names, that is I know the gentlemen by sight, I could not designate them by name; I think that is Mr. Harrison.

Q. Have you ever had any conversation with them about the Reed entry?

A. I never have.

Q. Respecting the Reed entry?

A. No, sir.

Q. Well, now, how did you get the impression that this boy was employed in Mr. Harrison's office?

A. I have no recollection; no, sir, I have not, that is, to my recollection.

Q. Who told you?

A. I do not remember who said so.

Q. Nor how you got the impression?

A. No; I was talking it over; I do not know how I could.

Q. Nor how you got the impression?

A. Some stated they thought it was——

Q. You did not read this telegram?

A. No, sir; I did not.

Q. What did you do in the matter when that boy approached you with the telegram?

A. My recollection—the first thing was to take him down to the Minnesota section, and found there that a case had been charged to division B.

Q. What then did you do?

A. I did nothing; he went down to division B and investigated, and then came back with the statement it was not in division B.

Q. That is, he came back and made such a statement?

A. That is my impression; yes, sir.

117 Q. The boy?

A. Yes, sir; either that he said that he had been down there and could not find it; I am not certain which way it was.

Q. Then, when he came back with that statement, you did what?

A. Well, think I told him—of course this matter—I cannot remember exactly—my impression is I told him the case was probably on the table in division C.

Q. Well, what then did you do?

A. I did nothing further in the matter until the card came up from the recorder.

Q. You say a card came up from the recorder?

A. Yes, sir; that is the paper.

Q. Is that the paper that came up from the recorder's division (Exhibit A)?

A. Yes, sir.

Q. This memorandum on the left hand upper corner of the paper is made by you and Reeds (Reeds)?

A. Yes, sir.

Q. Now, Mr. Douglas, you knew that when you sent that paper down in that way you were doing something out of the regular order?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Is it in regular order for you to take a paper out of that pile and send a paper to the recorder's division when nobody asks you to do so?

A. The cases belong to the recorder, and the statements have been made that the cases could not be found. I was the last person who had the case, and therefore they came to me; I found it and sent it down at his request.

Q. Then you knew that the case had been called for out of its regular order by the recorder?

A. Yes, sir; I knew that.

Q. And that was the reason why you marked "sent specially" on it?

A. I marked that sent specially to account for the case being out of the package.

Q. Why did you use the word "specially" when that was your only object?

A. Well, why I selected that special word I could not say.

Q. Now, Mr. Douglass, is it not a fact that you well knew in the

regular order that package of papers would go down to division B together to show that it was something out of the regular order?

A. I put that notation on it for my own protection—that is, otherwise the card would have come back marked one case short, but as to whether it was special in the line of work of the recorder was something I knew nothing about.

118 Q. Then you still consider the method by which that paper was taken out of division C and got down into division B, was entirely regular and proper?

A. It is something that I have nothing to do with.

Q. Do you still think that that method of doing business is regular?

A. I do not know, really do not know. Do not know what the practice of the recorder is.

Q. What do you think about it?

A. My private opinion, I do not know what orders he has.

Q. You would be ready to do this same thing tomorrow?

A. If the recorder would call for a case, one of the cases I had——

Q. You would do the same thing?

A. I would; yes, sir; I would certainly.

Q. And would consider it all right and proper?

A. If I considered it improper, I would not have sent the case.

Q. Did this boy or any one else ever exhibit to you anything except the telegram?

A. No, sir.

Q. Who was with the boy?

A. I cannot say whether the messenger—he may once, and I think that Mr. Townsend came with him once.

Q. What Townsend?

A. The chief of div. "C," not the recorder.

R. Chief of div. "C." What messenger was with him?

A. I cannot be positive about that.

Q. The boy wanted to take it himself, and you sent it down by the messenger belonging to div. "C"?

A. I could not say as to that. I think that I sent the case down by the messenger of div. "C." The boy wanted to take it down and I told him that I could not give it to him.

Q. Did any messenger come up from div. "B"?

A. That is my recollection.

Q. Then you finally sent it down by the messenger from "C"?

A. I think the messenger from "C" took it down. My recollection is that a messenger came up from div. "B" to see about it; yes, sir. If he came up he left. He was not there when the case was found. My recollection is that I sent the case down by a messenger from div. "C."

Q. Mr. Douglass, in your experience at that desk, do you recollect any other case similar to this, in which you took a like action?

A. No, sir.

—. You recollect none others?

A. Well, there is one case that I have at the recorder's request and took it down to him myself.

Q. What case was that?

A. I do not remember the case.

119 Q. Who was the attorney in it?

A. Do not remember the attorney.

Q. What district was it in?

A. I recollect that. I remember having gone to see him.

Q. Then in your entire experience at the desk, you only recall two such actions as this?

A. That other case is not similar to that case. I sent down to see the recorder myself.

Q. Well, then there was never any other case similar to this that occurred in your experience?

A. No, none similar to that.

Q. Mr. Douglass, is it customary to note contests on the tract books at all?

A. To note contests? I think not. The case is drawn by division "M." The contests in division "F" are noted on the tract book.

Q. Yes. Is it a fact that a bare examination of the tract book itself is a safe criterion for passing these cases for patents?

A. I think so.

Q. Is it not a fact that contests are not oftener noted on the tract book?

A. Well, the case is drawn.

Q. Answer my question.

A. I do not think the contests in division "M" are ever noted on the tract book.

Q. To what date are the Duluth tract books posted?

A. I could not say.

Q. Well, are any tract books in the office posted anywhere near to date?

A. The nearest, I presume, would be a month or so behind the returns.

Q. Now, when you make those examinations, do you inquire as to what date the tract book is posted?

A. No, sir.

Q. Well, how do you know there are no conflicting claims posted?

A. Unposted they would be subsequent to the entry.

Q. I asked you how you knew there were no such entries?

A. Of subsequent entry, I do not know, sir.

Q. Then you still think the tract book is a safe thing to follow in passing cases to patent?

A. I think it is the one thing that I have to follow.

Q. Do you think it is a safe thing to follow?

A. It would not be in this case, but I shall be compelled to rely of that.

By Mr. BRITTON:

Q. Mr. Douglass, you state that you do not know what attorney was notified of the Reed patent?

A. No; I said that I could not say that any attorney——

120 Q. And you stated that it was your custom to notify all the attorneys that had an appearance in the case?

A. *Off* (all) attorneys.

Q. Is it not to be presumed that in these cases you notified the attorneys whose appearance was in the case?

A. Well, there is one fact against that—the appearance of the attorneys not noted.

Q. Mr. Ha-rison's appearance is noted, is it not?

A. I did not examine Mr. Harrison's; Mr. Redington is not noted there.

Q. Look at the paper and see if the appearance if not noted?

A. I mean there is no notation on the appearance; the appearance is not noted on the case.

Q. Is it not the custom in such actions to notify the parties?

A. It is always unfavorable.

Q. Is it not to be presumed that you did notify them?

A. That is just what I am going to explain; when the party is notified by those slips, we indorse on them "Advised by slip," giving the date.

Q. It is possible you might have omitted that?

A. It is possible that I might have omitted that.

Q. If you did notify the attorneys in that case, how soon would they have received that notice before entry was sent to division B?"

A. They ought to receive it the next day.

Q. And is it not a fact these notices state the number of the entry, the entryman's name and date of the approval and date it was sent to "B?"

A. They give the number of the entry and usually the name of the homesteaders; in one or two cases I sent out cases without the name of the entryman; after that I always put the name of the entryman on the case.

Q. That was before you had approved this entry?

A. It would be so presumed.

Q. Then, if you had sent a notice in this case, it is to be presumed it would have stated the number of the entry and the entryman's name, and the notice would have reached the attorney's house before the paper had been sent to division "B?"

A. Well, you see it was sent—the notice, I presume, would have been sent to the attorney on the day that the cases were charged to division "B."

Q. On what day was that?

A. November 11.

Q. November 11? When was the case sent to division "B"?

A. On the 16th, I believe, that slip will show.

By BURDETT:

Q. Mr. Douglass, how long have these papers—1421 and '2—been on your desk when you approved them?

A. To approve that? That I could not say.

121 Q. Is there any record connected with your desk which would show when you received them?

A. When they were received? No, sir; there is not.

Q. From whom did you receive them?

A. I received them from the Duluth section.

Q. What particular clerk in that section would you have received them from?

A. I do not remember the lady's name who had charge of the work there.

Q. Whoever the lady is, or the clerk, is it their duty to date it?

A. Well, yes, sir, it *is*. It is noted on the tract book.

Q. Then there is a record which would show when you received those papers?

A. Yes, sir; there is a record.

Q. Have you any recollection of how soon after receiving them you took them up for action?

A. No, sir; I have no recollection whatever.

Q. Was your desk on Nov. last considerably crowded with work?

A. It was. It has been, owing to the fact that I am endeavoring to go through the files and make an examination of all cases. Some suspended cases and some that have been pending there for a number of years when the action has not been noted.

Q. Could you give me any estimate now of the number of cases you had on your desk at about the time you would receive these Duluth papers?

A. I had something over 700 cases.

Q. Had you any papers upon your desk at the time you examined this batch that had been received by you previous to receiving this batch?

A. You mean in my office? I have a number of cases.

Q. There were papers on your desk then which you had received as to time and order before your received these, which you have not acted upon?

A. Cases? Yes, sir. Cases that came there long before I took charge of the desk.

Q. Then, strictly, when you took up this batch of papers, they were not in order for examination?

A. They were in order as I understood it.

Q. Then do you mean that it is in order in accordance with the custom of your desk to act on papers last received rather than those first?

A. It is in order, or it was at that time, to take the cases of the office up in alphabetical order, acting on all the cases in each office as they were taken up. That was the order when I was examining these cases.

122 Q. Well, do you mean by that that if you had upon your desk papers not acted but which were to be acted upon by you there was some order of office that would allow you to drop or require you to drop the older papers to take up the newer ones? What has the alphabetical arrangement to do with that?

A. I do not think that I exactly understand. In taking charge of the desk I took up the order of examining commencing at the first of the alphabet, as there were a number of old cases in the

office and some suspended with no definite cause to be shown, I commenced alphabetically for the purpose of examining every case in there, and was endeavoring to do so as rapidly as possible, as there were a great many of old cases that had been there some time.

Q. Well, then that was a rule of your own, then?

A. That was a rule of mine, in keeping with former practice.

Q. And up to Nov., when you acted on these cases you had not got beyond D?

A. I had not got beyond D.

Q. You had never, up to that time, examined any lower down in the alphabet than D.

A. I had, yes, sir, some that were made special.

Q. When such as were made special?

A. Only such as were made special, I believe.

Q. How long had you been at that desk when you acted on these cases?

A. I came there about the middle of April, as stated in my letter, when I took charge.

Q. How many offices had you acted upon when you got down to Duluth?

A. I had acted on Aberdeen, on Camden; I think I had a case in Carson City. I had a large number of cases in Cheyenne, also in Crookston, Devil's Lake, Dardanelle, Bismarck, in fact I had examined all the offices that would come in the regular order.

Q. You had then begun at the beginning of the alphabet as far as office was concerned and cleared the docket?

A. Down to D, I have, sir.

Q. When did you adopt that rule, Mr. Douglas?

A. When I first took charge of the desk. Mr. Valk, my immediate predecessor, told me that when he first took charge of the desk he had gone over all the files and that he has examined them in that order.

Q. Now, Mr. Douglas, I want to return to the matter of the notice given, if you please; was there a settled rule of your desk which required you to notify the parties in interest or their attorneys when you approved the case for patent?

A. They had an appearance. It was a rule to notify them.

Q. That was a well-understood rule?

123 A. That was, and he understood the rule.

Q. It was one with which you were perfectly acquainted?

A. Yes, sir.

Q. At what point of time did you in your practice discharge that duty?

A. If I notified them on the slip as it read, I dated the notice on the day that the cases were charged to div. "B." Notices were sent out on that day.

Q. Is there any question in your mind that you failed to note the fact that in case 1420 there was the appearance of Luther Harrison, Mr. Seymour and Mr. Redington?

A. That I know of it? No, sir. The indorsement on the case in my own writing shows that I knew of it.

Q. That being the case, have you any reason to doubt, Mr. Douglass, that you did discharge that duty?

A. Well, what makes me—the only thing that would cause me to doubt would be the fact that it was not usual notation on the appearance.

Q. That is to say, that you didn't yourself note the fact that you had given the notice? That is what you meant by that?

A. That is it. That is what I do.

Q. Have you any other reason to doubt your discharge of duty?

A. No, sir.

Q. Do I understand you to say that you did send a notice to Mr. Redington?

A. I had an impression of having sent a notice to Mr. Redington at one time. I cannot say that it was in this case. Mr. Redington informed me at the office that he had never received a notice. Of course I could have no definite recollection of having notified Mr. Redington in this case, but am positive of having sent him notice in some case. Why I remember the fact I cannot say. But it is just fixed upon my mind.

Q. If you hadn't received any intimation from Mr. Redington that he had received no such notice, would it be your impression that you had notified him in this case?

A. It would have been my impression; yes, sir.

Q. Now, I want you to state why you can retain that impression and not retain the impression as to the fact whether or not you notified Messrs. Harrison and Seymour?

A. Well, it would have been my impression that I remember notifying them, but it is the usual practice.

Q. Then you have the same impression with respect to notifying them that you have with respect to notifying Mr. Redington?

A. No, sir. As I stated before, I recollect having sent Mr. Redington a notice in some case. I do not recollect sending it in this case, positively.

Q. I understand you that if you hadn't received Mr. Redington's notice that you had sent the notice * * *

124 A. No; I did not say that. You misunderstood me; but this is the only case in which I know of Mr. Redington's appearance. It may have been in one of these that I called him on.

Q. In whose control, Mr. Douglas, are papers after they have been approved and passed from your desk?

A. Passes from my desk. They are in the control of the recorder. They are in the control of the recorder after they are charged on charge books in div. "B." I then have nothing further to do with them; they are out of my office and I am not responsible for them.

Q. When were these papers charged off your books?

A. You see I have no record myself; the charge books are kept in different sections; I take the case there and the charges are made by the different clerks in charge there.

Q. Well, to whom had you taken these cases, after you got through with them?

A. Who take them? I place them on the messenger's desk charged to div. "B." I first take them to the section in which the office is; there the cases are charged to div. "B" under my direction; then they are returned to my desk; then I take them and place them in the messenger's desk to be taken to div. "B."

Q. To whom did you deliver them?

—. ——

Q. Then, at the time this telegram was exhibited to you, you knew the practice of the office had been relieved in any respect about the papers. (Uncertain.)

A. I had; yes, sir; the telegram was brought to me, I presume, because they failed to find the papers, and as I was the last person who had them they were brought to me to find.

Q. Has any question been raised with you, Mr. Douglas, in any other case alleging failure to send out notices?

A. None that I know of.

Q. Do you recollect any other case in which you failed to do that duty of your desk?

A. I do not recollect it.

Q. These are the papers and final certificate No. 1520, of Duluth, Minn.; it has the appearance of being all there; this appearance by Mr. Reddington is the paper the same as indorsed on the final paper and also the appearance of Mr. Harrison?

A. I do not know how to refer; there is a memorandum relating to the case that was put on subsequently; the notation of the appearance of the attorney I put on prior to the examination of the case; as to lot- 1, 2, S.W. ¼ N. E. ¼, N.W. ¼ S. E. ¼, lots 3, 5, 6, and S. E. ¼ N. W. ¼, see letter 1889, 65761 (Hobbs), containing motion for review of departmental decision Feb. 18, 1889; case of Hyde and McDonald *vs.* Stram and Eaton; noted Dec. 2, 1889, M. P. W.; this card, charging 10 cases of Duluth, Minn., to div. "B," Nov. 11, 1889; the same I made out the cases, also notations on the
125 card "see enclosed card for 1420 sent special Nov. 16, 1889;" that is in my writing; this card, which purports to be from the recorder has on it Duluth for "C" 1420 charged me Nov. 11, 1889; J. M. Townsend sent up by the recorder; I noted on that "sent special," Nov. 16, 1889; W. P. B.

By Mr. REDINGTON:

Q. Mr. Douglas, this Thomas Reed entry was numbered 1420; do you know anything about a certain 1422 being sent down to division "B"?

A. I have a recollection of having heard it mentioned, but do not remember anything in connection with it now.

Q. Can you tell us when 1422 was sent down to "B"?

A. No, sir; I cannot tell you; no, I am not certain.

Q. Have you any record in your section to tell?

A Yes, sir; the Duluth record will show.

Q. That is the day it was sent from C to B?

A. If it was sent from C to B the Duluth charge books will show it.

Q. Would that show the date that you approved it or that date it was actually sent down?

A. No, sir; none whatever.

Q. Do you know anything about that being done?

A. I do not recollect the case; no, sir.

By Mr. CONWAY:

Q. — is stated that your attention was called to the letter of Messrs. Curtiss and Burdett calling attention to a motion for review, pending in the Secretary's office; have you any recollection of that?

A. You mean that appearance there? That is the only letter that I have seen. Well, I have never seen any letter from Curtiss and Burdett. I have no recollection of having ever seen that letter.

Q. That is the letter? Mr. Hobbs states that he thinks he called your attention to it.

A. No, sir; I remember nothing. Do not think I ever saw it.

By Mr. BROWN:

Q. You state something about a telegram by an office boy. I would like to ask you if that is the one? Have you any notations of your own that would indicate? Didn't you make those notations?

A. No, I think not.

By Mr. HARRISON:

Q. Ain't there other marks on the telegram?

A. Yes, sir. There are the initials—would be the initials of the chief of div. "C."

126 Q. Well, I would ask you to examine that telegram particularly and state whether that telegram related to this Reed case?

A. You mean by reading the telegram "See that 1420 to Griggs and 1422 La Chance are mailed tomorrow"?

Q. What do you understand by that telegram?

A. Well, I would get no information from that telegram; it refers to no office.

Q. Don't it refer to the Griggs case, 1422?

A. I do not remember.

Q. I would ask you the further question whether the 1422 final certificate is not in the name of Philip Griggs?

A. If I had the case before me. I do not know the case is in div. "B," I could not go down and draw it.

Q. I would like you to examine as to that particular point and furnish the information to the board.

By Mr. BROWN:

Q. I suppose you could find it in a few moments?

A. I do not—I did not have the telegram.

Q. Isn't it a fact that those figures right there are your own?

A. No, sir.

By Mr. HARRISON:

Q. Are you familiar with the initials of the recorder?

A. I am not. Are those *are* the initials of the chief of div. "C"?

Q. Chief of div. "C." Probably chief of div. "C" could identify that as being the telegram referred to in the testimony.

A. I do *now* know.

By Mr. BRITTON:

Q. Mr. Douglass, is it your custom of entry by name or number of the entry?

A. By the number, altogether by the number, by the final certificate number.

By Mr. REDDINGTON:

Q. Mr. Douglass, was No. 1420 sent down from div. C to div. B upon strength of that telegram, or upon note and memorandum made by the recorder?

A. It was sent on the memorandum made by the recorder and the card sent up.

Q. After the telegram having been exhibited to you. Is that true?

A. The telegram was not specially exhibited to me. The boy had it in his hands with the initials of the chief on it.

Q. Then you went back to the recorder and got the slip that you have testified to?

A. My impression is that when the slip came up.

Q. It was upon the faith and strength of that slip that you sent the case down?

127 A. I sent the case down on the slip, on the telegram. I simply made the statement as to what became of the case.

By Mr. HARRISON:

Q. The case had been approved, however, prior to the date of that telegram, hadn't it?

A. November 15 is the date of the telegram.

Q. I want to ask you this question as to whether by reason of the fact that telegram was presented to you it influenced your mind in any way, shape or form in the Reed case?

A. It did not.

Q. The Reed case was actually approved by you prior to the receipt of that telegram?

A. I never received the telegram—never had the telegram in my hand that I remember of; it was in the boy's hands. I saw the initials on it and made a statement with regard to the case inquired about.

Q. I would like to ask you the further question as to whether I ever interviewed you in any way, shape or form as to 1422, Duluth, Thomas Reed?

A. I have no recollection of it.

Q. Did any other attorney who had an appearance in that case?

A. I have no recollection of it.
Q. Wasn't the action upon 1420 taken upon your own motion?
A. Upon my own motion. In fact I know it was.

UNITED STATES OF AMERICA,
District of Minnesota, Fifth Division.

Circuit Court. In Equity.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THOMAS REED *et al.*, Respondents.

The chancery subpœna of said court having issued on the 13th day of October, 1891, commanding Thomas Reed and the other defendants in the above-entitled cause to be and appear at December, 1891, rules and then and there answer said bill of complaint, and the marshal of said district having on the 13th day of November, 1891, returned said subpœna into court with the certificate that after due and diligent search he was unable to find said Thomas Reed within his said district; and on the presentation of the affidavit of the solicitor for the complainant reciting the foregoing facts and on his motion, in writing, presented at the same time with said affidavit, the court did on the 23d day of November, A. D. 1891, mak*ing* its order, which was duly filed in said case on the 25th day of November, 1891, directing that said Reed appear and plead, demur or answer to the said bill of complaint on the 4th day of April, A. D. 1892, and that service of said order be made
128 on said Reed wherever found, and especially appointing the United States marshal for the district of Nebraska, or his duly authorized deputy, to make service of said order upon said defendant, Thomas Reed, if found, and upon the filing of the affidavit that said defendant cannot, after diligent inquiry, be found, and that personal service is not practicable, said order might be served upon said defendant by publication once a week, for six consecutive weeks, in the St. Paul Dispatch; and the return of the United States marshal *from* the district of Nebraska wherein he certifies that after diligent search he was unable to find said defendant within his district, was filed April 2, 1892, and it having on the 1st day of April, 1892, been brought to the knowledge of the court, by the solicitor for complainant, that the return of said marshal for the district of Nebraska was received too late to make legal service of said order upon said defendant by publication, prior to the 4th day of April, 1892, and said defendant not having voluntarily appeared in this suit the court did, on motion of complainant's solicitor, make its order that said defendant, Thomas Reed, be and appear, plead, demur, or answer to bill of complaint herein on or before the 6th day of June, A. D. 1892, and that said order be served on said defendant by publication thereof once a week for six consecutive weeks in the St. Paul Dispatch, and further ordering that if said defendant fail to appear and plead, as therein directed, said bill should be taken as confessed, and the solicitor for complainant

having on the 30th day of August, A. D. 1892, filed in the case the affidavit of M. C. Melady one of the printers and publishers of the St. Paul Dispatch alleging that said last-mentioned order was published in said newspaper once a week for six consecutive weeks, and that the first publication thereof was made on 2d day of April, A. D. 1892, and the last publication thereof was made on the 7th day of May, 1892, and it is also appearing by the records and files of said cause that said defendant, Thomas Reed, has never made an appearance in the suit, voluntary or otherwise, and the time for said defendant to appear and answer having expired, on motion of Hon. Eugene G. Hay, solicitor for complainant,

It is hereby ordered, considered and adjudged that the said bill of complaint, as against said defendant, Thomas Reed, be taken *pro confesso*, for default of an answer, and that the complainant, The United States of America, have judgment against said defendant, Thomas Reed, as prayed for in its bill of complaint.

U. S. C. C. Seal. Witness the Hon. R. R. Nelson, judge of said court, and the seal thereof, at Duluth, Minn., this 5th day of September, A. D. 1892.

OSCAR B. HILLIS, *Clerk*,
By T. H. PRESSNELL, *Deputy*.

Filed Sept. 52, 189–. Oscar B. Hillis, clerk, by A. L. Bloomer, deputy.

129 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, —— Division.

I, Oscar B. Hillis, clerk of the said circuit court, do hereby certify and return to the honorable the United States circuit court of appeals for the eighth circuit, that the foregoing, consisting of 222 pages, numbered consecutively from 1 to 222 inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

The Seal of the U. S. Circuit Court, Dist. of Minnesota, Fifth Division. In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 25th day of March, A. D. 1893.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy*.

United States circuit court, district of Minnesota, third division. Return to circuit court of appeals for eighth circuit.
Filed April 4, 1893. John D. Jordan, clerk.

130 And on the 4th day of April, A. D. 1893, an appearance of counsel for appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1892.

GERMANIA IRON COMPANY *et al.*, Appellants,
vs.
THE UNITED STATES. } No. 281.

The clerk will enter my appearance as counsel for the appellants.

WM. W. BILLSON,
Duluth, Minn.

Endorsed: U. S. circuit court of appeals, eighth circuit. May term, 1893. No. 281. Germania Iron Co. *et al.*, appellants, *vs.* The United States. Appearance. Filed April 4th, 1893. John D. Jordan, clerk. Wm. W. Billson, counsel for appellants.

And on the 4th day of April, A. D. 1893, an appearance of counsel for appellee was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1893.

UNITED STATES OF AMERICA, Plaintiff & Respondent,
vs.
THOMAS REED (not Appealing) and GERMANIA IRON COMPANY, EMIL HARTMAN, and RICHMOND D. MALLETT, Defendants and Appellants. } No. —.

The clerk will enter my appearance as counsel for the respondent, The United States of America.

ROB'T G. EVANS,
Special Ass't U. S. Att'y.
EUGENE G. HAY,
U. S. Dist. Att'y for Minnesota.

131 Endorsed: U. S. circuit court of appeals, eighth circuit, October term, 189-. No. 281. Germania Iron Company *et al. vs.* The United States of America. Appearance. Filed April 4th, 1893. John D. Jordan, clerk. Rob't G. Evans, sp'l ass't U. S. att'y, counsel for respondent.

And on the first day of May, A. D. 1893, in the record of the proceedings of said circuit court of appeals is an entry in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1893.

MONDAY, *May 1st*, 1893.

GERMANIA IRON COMPANY *et al.*, Appellants,
vs.
THE UNITED STATES, Appellee. } No. 281.

Appeal from the circuit court of the United States for the district of Minnesota

This cause came on this day to be heard on the motion and affidavit of counsel for appellants to advance and set this cause for hearing at the present term.

On consideration whereof it is now here ordered by this court that this cause be, and the same is hereby, advanced and placed on the calendar at the present term and assigned for hearing June 28th, 1893.

And on the 8th day of May, A. D. 1893, an appearance of counsel for appellee was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1893.

GERMANIA IRON CO. *et al.*, Appellants,
132 *vs.*
THE UNITED STATES. } No. 281.

The clerk will enter my appearance as counsel for the appellee.

EUGENE G. HAY,
U. S. Dist. Att'y.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1893. No. 281. Germania Iron Co. *et al.*, appellants, *vs.* The United States. Appearance. Filed May 8th, 1893. John D. Jordan, clerk. Eugene G. Hay, U. S. att'y, St. Paul, Minn., counsel for appellee.

And on the 28th day of June, A. D. 1893, in the record of the proceedings of said circuit court of appeals is an entry in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1893.

WEDNESDAY, *June 28th*, 1893.

GERMANIA IRON COMPANY *et al.*, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee. } No. 281.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been, by order heretofore entered, advanced and assigned for hearing this day, argument was commenced by Mr.

William W. Billson, counsel for appellants, continued by Mr. Eugene G. Hay, United States attorney, counsel for appellee, and concluded by Mr. William W. Billson, for appellant.

Thereupon this cause was submitted to the court upon the transcript of record from said circuit court and the briefs of counsel filed herein.

133 And on the 2d day of October, A. D. 1893, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

134 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1893.

THE GERMANIA IRON COMPANY, EMIL HARTMANN, and RICHMOND D. MALLET, Appellants, *vs.* THE UNITED STATES OF AMERICA, Appellee.	No. 281. Appeal from the Circuit Court of the United States for the District of Minnesota.

Mr. W. W. Billson (Mr. Congdon was with him on the brief), for the appellants.

The Attorney General; Mr. Eugene G. Hay, U. S. district attorney, and Mr. Robert G. Evans, for the United States, appellee.

Before Caldwell and Sanborn, circuit judges, and Thayer, district judge.

Statement.

This was a bill filed by the Attorney General in behalf of the United States, to cancel a patent for certain lands situated in the Duluth land district of the State of Minnesota, which was issued by mistake to Thomas Reed on the 20th day of November, 1889.

The admitted facts on which the Government predicates its right to the relief sought by the bill are substantially these:

On the 21st of July, 1885, the land in question being a part of the public domain, Orilie Stram adjusted a certain scrip location thereon that had been previously made, which location was duly posted in the office of the Commissioner of the General Land Office, on the ninth day of the following September. The validity of such location was contested by Fred. T. Huntress. Thomas W. Hyde and Angus McDonald also made certain pre-emption claims to some of the same lands, and the controversy thus raised came by appeal before the Secretary of the Interior.

135 On February 18, 1889, the Secretary disposed of the appeal, for the time being, holding that the scrip location of said Stram was invalid, and that the Hyde and McDonald claims must likewise be rejected.

Thereafter, on February 23, 1889, Thomas Reed was allowed to make a soldiers' additional homestead entry, on a part of said lands,

and to obtain a final certificate therefor numbered fourteen hundred and twenty. At the same time that Reed made his entry, Charles P. Wheeler, Warren Wing, and William Stokes, were present, and sought to make entries on the lands now in dispute, in pursuance of various provisions of the land laws of the United States, but they were less successful. The applications of Wheeler, Wing, and Stokes were denied, and they thereupon prosecuted appeals to the Commissioner of the General Land Office.

On the 18th of February, 1889, and long prior thereto, there was a rule in force in the Department of the Interior to the following effect: That motions for the review of decisions of the Secretary of the Interior, and applications under department rules 83 and 84, should be filed with the Commissioner of the General Land Office, who should thereupon suspend action under the decision sought to be reviewed, and forward to the Secretary such motion for review or application.

Motions in behalf of Stram, Hyde and McDonald, to obtain a review of the Secretary's decision of February 18, 1889, were duly made and filed on March 13 and 15, 1889, and pursuant to the rule aforesaid, an order was made suspending all action on said decision, which order was in full force on November 20, 1889, when the patent to Reed was issued. At the latter date the appeals of Wheeler, Wing and Stokes, heretofore mentioned, were pending and undetermined, and are still undetermined by the Land Department.

Notwithstanding these facts, while the aforesaid motions and appeals were pending, a clerk in the General Land Office approved the lands in controversy for patenting to said Thomas Reed, and in consequence of such approval a patent was issued on November 20, 1889. The action of the clerk in approving the lands for patenting, appears to have been induced solely by oversight, in failing to take notice of the pendency of the motions for review aforesaid, and the order made thereon suspending action under the Secretary's decision of February 18, 1889. The President's signature to the patent by his Secretary, and the signature of the recorder of the General Land Office, were each induced by the action of said clerk in inadvertently approving the land for patenting.

The patentee, Reed, who was named as a defendant in the circuit court, suffered a default. The appellants have acquired title to the lands in controversy by mesne conveyances under Reed, but it is not claimed that as purchasers in good faith they have a better title than their grantor. The circuit court decreed that on the facts aforesaid, which were undisputed, the Government was en-
136 titled to a cancellation of the Reed patent on the ground of accident, inadvertence and mistake, and from such ruling the defendants below have prosecuted an appeal.

THAYER, district judge, delivered the opinion of the court:

The learned counsel for the appellants does not challenge the right of the Attorney General, under the laws of the United States, to file a bill in behalf of the Government to obtain the cancellation of a patent on the ground of fraud, accident, or mistake, where the

Government has an interest in, or is under an obligation in respect to the relief sought, and in view of the decisions of the Supreme Court of the United States, the right in question could not be successfully challenged. United States *v.* San Jacinto Tin Company, 125 U. S., 273, 285, 286; United States *v.* Beebe, 127 U. S., 338, 342; United States *v.* Missouri, Kansas & Texas R'y Co., 141 U. S., 358, 380, 381, 382. But it is urged as grounds for reversal (and these are the only points which we deem it necessary to consider) that, upon the undisputed facts disclosed by the present record, the United States had no interest entitling it to maintain the bill, and that in any event it was not entitled to a decree cancelling the Reed patent no account of the mistake disclosed by the bill, unless it alleged and affirmatively proved, that other persons than Reed had a superior right to the land, and would probably have prevailed in the controversy before the Secretary of the Interior, if the mistake complained of had not forestalled a decision.

We are compelled to dissent from both of these propositions. The United States in disposing of the public domain through the action of its Land Department, cannot be relegated to the position of an ordinary private vendor of lands. As has been frequently declared, in substance, the Government is clothed with a trust in respect to the public domain. It is charged with the duty of protecting it from trespasses and unlawful appropriation, and likewise with the duty of enforcing the laws which have from time to time been enacted by Congress, prescribing the terms and conditions upon which individuals may acquire a title to portions thereof. For the purpose of supervising the execution of such laws and all proceedings taken thereunder, it has created a Land Department, which is recognized as pertaining to the executive branch of the Government. And this department has in turn established rules and regulations for the orderly conduct of its business, which, within certain well-defined limits, have the force and effect of law, and on the due observance of which all citizens have the right to rely. Smelting Company *v.* Kemp, 104 U. S., 636, 640; United States *v.* Beebe *supra;* United States *v.* Missouri, Kansas & Texas R'y Co., *supra.*

Again, as the Land Department is charged with the execution of the laws relating to the sale and disposition of the pub-
137 lic lands, it has a primary jurisdiction to hear and determine all contests involving claims to portions of the public domain, and the decision of the proper officers of the Land Department, upon questions of fact properly determinable by them, cannot be assailed in a collateral proceeding. Smelting Company *v.* Kemp, *supra;* Beard *v.* Federy, 3 Wall. *id.* 70 U. S., 478, 492; Marquez *v.* Frisbie, 101 U. S., 473, 476. A patent for lands when issued, thus becomes a powerful weapon of offense or defense, and for both of these reasons—that is, because of the primary jurisdiction lodged in the Land Department, and the weight accorded to its decisions—the courts have on various occasions refused to take any action that would interfere with or forestall the final action of that department in a controversy properly pending before it. Marquez *v.* Frisbie, 101 U. S., 473, 475; Casey *v.* Vassor, 50 Fed. Rep., 258.

In view of these considerations, it cannot be successfully maintained that the United States had no interest in, and was under no obligation in respect to the relief sought, that entitled it to maintain the present bill, or that it was bound to show affirmatively as a condition precedent to a decree in its favor that Reed was not entitled to the land. By sheer accident—by an oversight of a subordinate clerk—a person had obtained a patent for public land, said to be worth seventy-five thousand dollars, not only in violation of a long-standing rule of the department, but contrary to an express order of the Commissioner of the General Land Office, suspending for the time being all action "looking to a disposal of the land." The interest of the Government lies in its obligation to its citizens to see that the rules and regulations made by the Land Department for the guidance and protection of the citizen, are faithfully observed, and in the further fact that a primary jurisdiction vested in one of the co-ordinate branches of the Government, has been inadvertently wrested from it and transferred to another, where one of the claimants, in view of the outstanding patent, will be compelled to pursue the contest with his adversary at a great disadvantage. And having such an interest in the prosecution of the suit, the courts will not compel the Government as a condition precedent to obtaining relief, to try the very question which was pending before the Land Department at the time it lost jurisdiction, and to show affirmatively that some other person than the patentee had a superior right to the land. It is sufficient for the purposes of this suit, that some other person may have a superior right, and that it is the function of the Land Department to determine that question in the first instance.

Touching the question of the interest of the Government to maintain the present bill, the views which we have expressed find support in a recent decision heretofore cited, United States *v.* The Missouri, Kansas & Texas Ry Co., 141 U. S., 358, 380. In that case it appeared that through a mistake on the part of the officers of the Land Department, certain lands had been wrongfully pat-
138 ented to a railway company as a part of its land grant, on which lands many persons had settled, claiming a right to do so under the homestead and pre-emption laws, although the officers of the Land Department had not permitted such settlers to do any act with them, officially, for the purpose of perfecting their titles. On a bill filed by the Attorney General in behalf of the United States to vacate said patent, Mr. Justice Harlan said, concerning the right of the Government to sue, "that it was under an obligation to claimants under the homestead and pre-emption laws to undo the wrong alleged to have been done by its officers, in violation of law, by removing the cloud cast upon its title by the patents in question, and thereby enable itself to properly administer these lands, and give clear title to those whose rights may be superior to those of the railway company." In other words, the court refused to compel the settlers to prosecute a private suit against the holder of a patent, which had been inadvertently issued, holding that it was the right and duty of the Government to sue in such cases.

The case of Williams *v.* The United States, 138 U. S., 514, more pointedly supports the views that we have expressed. In that case a notation opposite a particular tract of land, described on a list of lands that had been selected by the State of Nevada, to the effect that it was a "mill site," was erased while such list was on file in the Land Department awaiting the approval of the Secretary of the Interior. It was conceded for the purpose of the decision that the erasure was due to inadvertence and mistake. The existence of the notation would have prevented the Secretary of the Interior, in the orderly discharge of his duties, from approving the list as it was his province to do under the act authorizing the State of Nevada to select certain lands, until a pending controversy as to the right of the State to select the particular tract had been determined. But the accidental erasure of the notation, led the Secretary of the Interior to approve the list and forward the same to the governor of the State. On a bill filed by the United States against a person who had a contract with the State to purchase the tract of land noted as a "mill site," to cancel such contract of sale and to divest his title, on the ground that the lands had been improperly certified to the State through fraud and mistake, it was held, that the United States was entitled to the relief sought solely on the ground of mistake. And to the argument strongly urged against the United States, that it was not entitled to relief because in any event, under existing laws, the State had an undoubted right to select the particular tract, and must have prevailed in any controversy touching that right, the court answered in substance, that, conceding such to be the case, there was a limited discretion imposed on the Secretary of the Interior in the matter of approving the selection, which through accident and mistake he had been deprived of the right to exercise; that but for the erasure of the notation the Secretary might
139 at least have withheld his approval until the right of selection under existing laws had been finally determined by the department, or until some relief had been afforded by special act of Congress to the party who contested the State's right of selection.

It must be conceded, we think, that the last-mentioned decision strongly supports every position which has been assumed by the Government, even if it is not decisive of the present controversy. Our conclusion is that the decree of the circuit court was right, and it is hereby affirmed.

Filed October 2, 1893.

140 And on the 2d day of October, A. D. 1893, in the record of the proceedings of said circuit court of appeals is a decree in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1893.

MONDAY, *October 2d*, 1893.

GERMANIA IRON COMPANY, EMIL HARTMANN, and RICHMOND D. MALLETT, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee. } No. 281.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed without costs to either party in this court.

OCTOBER 2, 1893.

On the 2d day of December, A. D. 1893, a mandate in said cause was issued to the circuit court of the United States for the district of Minnesota in the words and figures following.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Minnesota, Greeting:

Whereas lately, in the circuit court of the United States for the district of Minnesota, before you or some of you, in a cause between The United States of America, complainant, and Thomas
141 Reed, The Germania Iron Company, Emil Hartmann, and Richmond D. Mallett, respondents, wherein the decree of the said circuit court, entered in said cause on the 23rd day of January, A. D. 1893, is in the following words, viz:

"This cause came on to be heard at this term and was argued by counsel for the respective parties, except defendant Thomas Reed, against whom judgment *pro confesso* for default of answer has heretofore, on the 5th day of September, A. D. 1892, been duly ordered herein; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the patent described in the bill of complaint herein from the United States to said Thomas Reed, dated November 20th, 1889, and recorded in the office of the register of deeds of St. Louis county, Minnesota, in Book D of Patents, page 54, on the 29th day of November, 1889, purporting to convey the southwest quarter of the northeast quarter (S. W. ¼ N. E. ¼) and lots one (1) and two (2) of section thirty (30), township sixty-three (63) north, of range eleven (11) west, of the fourth P. M., in St. Louis county, Minnesota, be, and the same hereby is, cancelled, vacated, and declared null and

void, and that the defendants and each of them and all parties claiming under or through them or either of them be forever enjoined and restrained from setting up or asserting any title whatever under or through said patent, and that said patent be surrendered to the Secretary of the Interior.

And, further, that the complainant have and recover of and from the defendants its costs and disbursements allowed to it by law," as by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals, eighth circuit, by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of May, in the year of our Lord one thousand eight hundred and ninety-three, the said cause came on to be heard before the said United States circuit court of
142 appeals on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed without costs to either party in this court.

OCTOBER 2, 1893.

You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the second day of December, in the year of our Lord one thousand eight hundred and ninety-three.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

Costs of ——.

Clerk	$8
Printing record	8
Attorney	8
	$8

Endorsed: United States circuit court of appeals. No. 281. May term, 1893. Germania Iron Company *et al.*, appellants, *vs.* The United States of America. Mandate.

And on the 8th day of December, A. D. 1893, there was filed in the clerk's office of said circuit court of appeals in said cause a petition for appeal; which, with the order allowing appeal indorsed thereon, is in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

GERMANIA IRON COMPANY, EMIL HARTMAN, and RICHMOND D. MALLET, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

143 The above-named appellants, The Germania Iron Company, Emil Hartmann, and Richmond D. Mallet, conceiving themselves aggrieved by the judgment entered on the second day of October, A. D. 1893, in the above-entitled cause, hereby appeal from the said judgment to the Supreme Court of the United States, and they pray that their appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said judgment was made and rendered, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Duluth, Minn., December 6th, A. D. 1893.

WM. W. BILLSON,
C. A. CONGDON,
Attorneys for Appellants Above Named,
802 *Torrey B'ld'g, Duluth, Minn.*

And now, to wit, on December eighth, A. D. 1893, it is ordered that the appeal be allowed as prayed for.

HENRY C. CALDWELL,
Circuit Judge.

Endorsed: No. 281. U. S. circuit court of appeals, eighth circuit. Germania Iron Co. *et al.*, appellants, *vs.* United States of America, appellee. Petition for allowance and order allowing appeal. William W. Billson, appellants' attorney, 802–806 Torrey b'ld'g, Duluth, Minn. Filed Dec. 8, 1893. John D. Jordan, clerk.

And on the 8th day of December, A. D. 1893, there was filed in the clerk's office of the United States circuit court of appeals in said cause a bond on appeal in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

GERMANIA IRON COMPANY, EMIL HARTMANN, and RICHMOND D. MALLET, Appellants,
vs.
UNITED STATES OF AMERICA, Appellee.

144 Know all men by these presents that we, The Germania Iron Company, Emil Hartmann, and Richmond D. Mallet, of the city of Duluth, in the State of Minnesota, as principals, and J. H. Crowley and E. H. Burger, of the same place, are held and firmly bound unto the above-named United States of America in the sum of one thousand dollars, to be paid to the said United States of America; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs,

executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated the 6th day of December, A. D. 1893.

Whereas the above-named The Germania Iron Company, Emil Hartmann, and Richmond D. Mallet have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the said United States circuit court of appeals for the eighth circuit:

Now, therefore, the condition of this obligation is such that if the above-named Germania Iron Company, Emil Hartmann, and Richmond D. Mallet shall prosecute their said appeal to effect and answer all costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

In witness whereof the said Germania Iron Company has caused these presents to be signed by its secretary and its corporate seal to be hereunto affixed, and the said other obligors have hereunto set their hands and affixed their seals this sixth day of December, A. D. 1893.

GERMANIA IRON COMPANY, [SEAL.]
By WM. W. BILLSON, *Secretary.*
EMIL HARTMANN. [SEAL.]
RICHMOND D. MALLET. [SEAL.]

Signed, sealed, and delivered in the presence of—
JNO. M. McCLINTOCK.
JAMES WANLESS.

145 JNO. H. CROWLEY. [SEAL.]
E. H. BURGER. [SEAL.]

STATE OF MINNESOTA, } ss:
County of St. Louis, }

Be it known that on this 6th day of December, A. D. 1893, before me personally appeared Emil Hartmann, Richmond D. Mallet, Jno. H. Crowley, and E. H. Burger, to me known to be the same persons described in and who executed the foregoing instrument, and each for himself acknowledged the same to be his own free act and deed.

[SEAL.] JAMES WANLESS,
Notary Public, St. Louis County, Minn.

STATE OF MINNESOTA, } ss:
County of St. Louis, }

On this 6th day of December, A. D. 1893, before me appeared Wm. W. Billson, to me personally known, who, being duly sworn, says that he is the secretary of the Germania Iron Company, the corporation mentioned in the foregoing bond; that the seal affixed to the same is the corporate seal of said company, and was by him affixed thereto as the secretary of said corporation, and acknowl-

edged the said instrument to be the free act and deed of said corporation.

[SEAL.]

JAMES WANLESS,
Notary Public, St. Louis County, Minnesota.

STATE OF MINNESOTA, }
County of St. Louis, } ss:

John H. Crowley and E. H. Burger, the persons named in and who executed the foregoing bond, being first duly sworn, doth each for himself depose and say that he is a resident and freeholder of the State of Minnesota and worth the amount of one thousand dollars above his debts and liabilities and exclusive of his
146 property exempt from execution.

JNO. W. CROWLEY.
E. H. BURGER.

Subscribed and sworn to before me this 6th day of December, A. D. 1893.

[SEAL.]

JAMES WANLESS,
Notary Public, St. Louis County, Minnesota.

UNITED STATES OF AMERICA, }
Eighth Circuit, } ss:

The above and foregoing bond is hereby approved this 8th day of December, 1893.

HENRY C. CALDWELL,
U. S. Circuit Judge, Eighth Circuit.

Endorsed: U. S. circuit court of appeals, eighth circuit. Germania Iron Co. *et al.*, appellants, *vs.* United States of America, appellee. Bond on appeal to U. S. Supreme Court. Filed Dec. 8, 1893. John D. Jordan, clerk.

And on the 11th day of December, A. D. 1893, there was filed in the clerk's office of said circuit court of appeals in said cause an affidavit of Emil Hartmann as to value of land in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

GERMANIA IRON COMPANY, EMIL HARTMANN, and RICHMOND D. MALLET, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

THE DISTRICT AND STATE OF MINNESOTA, }
County of St. Louis, } ss:

147 On this 11th day of December, A. D. 1893, came personally before me Emil Hartmann, who, being first duly sworn, de-

poses and says that he is one of the parties to the above entitled cause and is acquainted with the lands in the bill of complaint in this cause described, to wit, the southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼) and lots one (1) and two (2) of section thirty (30), township sixty-three (63) north, of range eleven (11) west, in the Duluth land district, in the State of Minnesota, and is acquainted with the character and value of said lands, and that the said lands are and ever since long prior to the commencement of this action have been worth more than the sum of fifteen thousand dollars ($15,000).

Further affiant saith not, save that he makes this affidavit in evidence of the value of said lands with a view to an appeal of this cause to the Supreme Court of the United States, the value of said land not being disclosed by the pleadings.

(Signed) EMIL HARTMANN.

Subscribed and sworn to before me this 11th day of December, A. D. 1893.

WILLIAM W. BILLSON,
[SEAL.] *Notary Public, St. Louis County, Minnesota.*

Indorsed: U. S. circuit court of appeals, eighth circuit. Germania Iron Co. *et al.*, appellants, *vs.* United States of America, appellee. Affidavit of Emil Hartmann as to value of land. Filed Dec. 14, 1893. John D. Jordan, clerk.

And on the 14th day of December, A. D. 1893, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which is hereto attached and herewith returned:

148 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein The Germania Iron Company, Emil Hartman, and Richmond D. Mallet are appellants and The United States of America is appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the circuit court of the United States for the eighth circuit, this eighth day of December, in the year of our Lord one thousand eight hundred and ninety-three.

HENRY C. CALDWELL,
Circuit Judge.

[Endorsed:] U. S. circuit court of appeals, eighth circuit. Germania Iron Co. *et al.*, appellants, *vs.* United States of America, appellee. Citation. Filed Dec. 14, 1893. John D. Jordan, clerk. William W. Billson, appellants' attorney, 802–806 Torrey Bl'd'g, Duluth, Minn.

Due service of copy of within citation is admitted this 12th day of December, A. D. 1893.

EUGENE G. HAY,
U. S. Att'y, Dist. of Minn., & Att'y for Appellee.

149 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing 148 pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of The Germania Iron Company *et al.*, appellants, *vs.* The United States of America, appellee, No. 281, May term, 1893, as the same remain upon the files and records of said United States circuit court of appeals. I further certify that the original citation in said cause is hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this 19th day of December, A. D. 1893.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 15,473. U. S. circuit court of appeals, 8th circuit. Term No., 308. The Germania Iron Company, Emil Hartman, & Richmond D. Mallet, appellants, *vs.* The United States. Filed January 2, 1894.